

CLERK'S COPY.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 452

COMMISSIONER OF INTERNAL REVENUE,
PETITIONER

VS.

CHARLES T. FISHER, EDWARD F. FISHER, AND LEO
M. BUTZEL, EXECUTORS OF THE ESTATE OF FRED
J. FISHER, AND BURTHA M. FISHER

ON WRIT OF HABEAS CORPUS TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF HABEAS CORPUS FILED SEPTEMBER 24, 1945
WRIT OF HABEAS CORPUS GRANTED NOVEMBER 5, 1945

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 452

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

CHARLES T. FISHER, EDWARD F. FISHER, AND LEO
M. BUTZEL, EXECUTORS OF THE ESTATE OF FRED
J. FISHER, AND BURTHA M. FISHER

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SIXTH CIRCUIT

INDEX

	Original	Print
Record from The Tax Court of the United States	1	1
Appearances	1	1
Docket entries	1	1
Petition	3	3
Exhibit A—Notice of deficiency	8	6
Answer	13	9
Order for substitution of parties	14	10
Stipulation of facts	15	10
Joint Exhibit A-1—Minutes of Special meetings of the Board of Directors of the Senior Investment Corporation of January 31, 1934 and May 8, 1934	26	19
Joint Exhibit A-2—Articles of incorporation of Senior Investment Corporation	29	21
Joint Exhibit A-3—Agreement and plan of reorgani- zation and recapitalization of Senior Investment Corporation	56	41
Joint Exhibit A-4—Balance sheet of Senior Invest- ment Corporation of June 30, 1933	65	46
Joint Exhibit A-5—Work sheet of Senior Investment Corporation of June 30, 1933	71	49
Joint Exhibit A-6—Charter provisions	73	50
Joint Exhibit A-7—Certificate of incorporation of Senior Investment Corporation	77	53
Joint Exhibit A-8—Amendment to articles of in- corporation of Senior Investment Corporation	100	70

Record from The Tax Court of the United States—Continued.

Stipulation of facts—Continued.

	Original	Print
Joint Exhibit A-9—Minutes of special meeting of the Board of Directors of August 24, 1933.....	108	76
Joint Exhibit A-10—Minutes of special meeting of the Board of Directors of August 24, 1933.....	112	79
Joint Exhibit A-11—Minutes of special meeting of the Board of Directors of August 28, 1933.....	116	82
Joint Exhibit A-12—Minutes of special meeting of the Board of Directors of August 28, 1933.....	127	89
Joint Exhibit A-13—Minutes of first meeting of Board of Directors of August 28, 1933.....	130	91
Memorandum opinion, Sternhagen, J.....	141	99
Decision.....	143	101
Petition for review.....	144	101
Notices of filing petition for review.....	144	101
Statement of points.....	146	103
Designation of record on review.....	148	104
Clerk's certificate (omitted in printing).....	149	105
Order enlarging time.....	150	105
Proceedings in U. S. C. C. A., Sixth Circuit.....	151	106
Judgment.....	151	106
Opinion, Allen, J.....	151	107
Petition of Commissioner for rehearing.....	157	110
Order granting rehearing.....	160	111
Judgment on rehearing.....	160	112
Clerk's certificate (omitted in printing).....	161	113
Order granting certiorari.....	162	113

1 In the Tax Court of the United States

Docket No. 104661

FRED J. FISHER AND BURTHA M. FISHER, HUSBAND AND WIFE,
AMENDED TITLE—ESTATE OF FRED J. FISHER, DECEASED, CHARLES
T. FISHER, EDWARD F. FISHER AND LEO M. BUTZEL, EXECUTORS
AND BURTHA M. FISHER (See Order of 10-19-42) PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Appearances

For Taxpayer: Benjamin E. Jaffe, Esq., R. M. O'Hara, Esq.
For Commissioner: Philip M. Clark, Esq.

Docket Entries

1940

- Sept. 6—Petition received and filed. Taxpayer notified. Fee paid.
- Sept. 6—Copy of petition served on General Counsel.
- Nov. 4—Answer filed by General Counsel.
- Nov. 4—Request for hearing in Detroit, Michigan, filed by General Counsel.
- Nov. 8—Notice issued placing proceeding on Detroit, Michigan calendar. Service of answer and request made.

2 1941

- July 18—Hearing set September 15, 1941, in Detroit, Michigan.
- Aug. 25—Motion for a continuance to the next calendar to be heard in Detroit, Michigan, filed by taxpayer. 8-26-41 granted.

1942

- Sept. 25—Hearing set November 2, 1942, in Detroit, Michigan.
- Oct. 19—Notice of appearance of R. M. O'Hara as counsel filed.
- Oct. 19—Motion for substitution of parties filed by taxpayer.
- Oct. 19—Order that henceforth the caption of this proceeding shall be Estate of Fred J. Fisher, deceased, Charles T. Fisher, Edward F. Fisher and Leo M. Butzel, Executors and Burtha M. Fisher, entered.
- Oct. 27—Application for subpoena to R. L. Dando filed by General Counsel, 10-27-42 Subpoena issued.
- Oct. 27—Application for subpoena to Robert C. Haydock filed by General Counsel. 10-27-42 Subpoena issued.

Oct. 28—Motion for continuance to the next Detroit Circuit Calendar after January 1, 1943, filed by taxpayer. 10-28-42 Granted.

1943

Aug. 17—Hearing set September 27, 1943; in Detroit, Michigan.

Aug. 27—Application for subpoena duces tecum to Robert C. Haydock filed by General Counsel. 8-27-43 Subpoena issued.

Aug. 27—Application for subpoena to R. L. Dando filed by General Counsel. 8-27-43 Subpoena issued.

Sept. 29—Hearing had before Judge Sternhagen, on the merits. Submitted. Stipulation of facts filed. Briefs due as per rules.

Oct. 11—Transcript of hearing 9-29-43 filed.

Nov. 11—Motion for extension to Dec. 10, 1943, to file brief, filed by taxpayer. 11-11-43 granted.

3 Nov. 13—Memorandum brief filed by General Counsel. Served 12-20-43.

Dec. 20—Brief filed by taxpayer. 12-20-43 Copy served.

1944

Jan. 10—Stipulation correcting transcript of testimony filed.

Feb. 9—Memorandum opinion rendered, Judge Sternhagen, Div. 10. Decision will be entered under Rule 50. 2-10-44 Copy served.

Mar. 22—Computation of deficiency filed by General Counsel. Agreed to.

Mar. 23—Decision entered. Judge Sternhagen, Div. 10.

June 22—Petition for review by U. S. Circuit Court of Appeals, 6th Circuit, filed by General Counsel.

June 22—Notice of filing petition for review sent to Benjamin E. Jaffe filed.

July 17—Motion for extension to 9-20-44 to transmit, prepare, and deliver record filed by General Counsel.

July 17—Order enlarging time to 9-20-44 to transmit and deliver record entered.

July 24—Proof of service filed by General Counsel.

Aug. 29—Statement of points with statement of service by mail thereon, filed by General Counsel.

Aug. 29—Designation of record filed by General Counsel. Statement of service by mail thereon.

In the Tax Court of the United States

Petition

Filed September 6, 1490

The above-named petitioners hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Bureau symbols IT: Conf.) dated June 14, 1940, and as a basis of this proceeding allege as follows:

1. Petitioners are individuals, husband and wife, with residence at 54 Arden Park, Detroit, Michigan. Petitioners
4 filed a joint income tax return for the year here involved with the Collector of Internal Revenue at Detroit, Michigan.

2. The notice of deficiency (a copy of which is hereto attached and marked Exhibit A) appears to have been mailed to the petitioners on June 14, 1940.

3. The taxes in controversy are income taxes in the sum of \$1,231,636.92 claimed in the notice of deficiency for the calendar year 1934, and \$36,290.33 income taxes which these petitioners claim they have overpaid for the said year.

4. The determination of tax set forth in the said notice of deficiency and the claim for the refund of said overpayment are based upon the following errors:

(c) The respondent erred in holding that the distribution by Senior Investment Corporation of 43,300 shares of General Motors Corporation common stock to petitioner Fred J. Fisher on January 31, 1934, constituted a taxable dividend, and respondent erred in adding \$1,723,881.25 to the taxable income of the petitioners.

(d) The respondent erred in failing to find that the petitioners had overpaid income taxes for the year 1934 in the sum of \$36,290.33.

5. The facts upon which the petitioners rely as a basis of this proceeding are as follows:

(c) Senior Investment Corporation was organized on July 29, 1929, under the laws of the State of Michigan. The authorized capital stock consisted of 300,000 shares without nominal or par value, being 100,000 shares of Class A, 100,000 shares Class B, and 100,000 shares of Class C stock. The corporation issued 80,716 shares of its Class A stock and 100,000 shares of its Class C stock for property having a total value of \$56,718,058.92, subject

5 to liabilities assumed by the corporation amounting to \$8,288,381.16, giving a net value of \$48,429,677.76. The corporation issued its 100,000 shares of Class B stock for property having a value of \$40,000,000.00.

On August 29, 1933, Senior Investment Corporation was reorganized pursuant to a Plan of Reorganization, dated August 23, 1933. Immediately prior to said reorganization, Senior Investment Corporation had an operating deficit of \$21,041,234.22. Pursuant to said Plan of Reorganization, a Delaware corporation was organized by name of Senior Corporation, with an authorized capital stock of 300,000 shares, consisting of 100,000 shares of Class A stock of the par value of \$10 per share, 100,000 shares of Class B stock of the par value of \$10 per share and 100,000 shares of Class C stock without par value. Senior Investment Corporation transferred to the said Delaware corporation assets of a value of \$20,838,325.63, in exchange for 71,753 shares of its Class A stock, 100,000 shares of its Class B stock and 100,000 shares of its Class C stock, which shares of stock were issued to the stockholders of Senior Investment Corporation in the proportions they were entitled to. Senior Investment Corporation retained assets of a net value of \$5,677,827.19 and reduced its authorized capital stock to 200,000 shares, consisting of 100,000 shares of Class A stock with a par value of \$5 per share and 100,000 shares of Class C stock with a par value of \$1 per share. The holders of Class B stock surrendered same for cancellation and pursuant to corporate action, the outstanding Class A and Class C certificates were stamped with the following legend:

6 "Class A stock became stock of the par value of \$5.00 per share and Class C stock became stock of the par value of \$1.00 per share, and Class B stock was eliminated and the powers, preferences and rights and the qualifications, limitations or restrictions with respect to the Class A stock and Class C stock were amended by amendment to the Articles of Incorporation effective August 29, 1933, pursuant to Plan of Reorganization and Recapitalization dated August 23, 1933."

In the Articles of Incorporation of the Delaware corporation and in the amended Articles of Senior Investment Corporation, the various classes of stock provided for, and the powers, preferences and rights thereof as to dividends, redemption and liquidation, were worked out in such manner that upon the consummation of the said Plan of Reorganization the powers, preferences and rights, and the qualifications, limitations or restrictions of the respective classes of stock of the two corporations were in sum total equivalent to the powers, preferences and rights, and the qualifications, limitations or restrictions of the respective classes of stock of Senior Investment Corporation, thus preserving the

status of all of the stockholders of Senior Investment Corporation as it existed just prior to the said reorganization.

(c) On January 31, 1934, the Board of Directors of Senior Investment Corporation adopted a resolution providing for a capital distribution of a total of 43,300 shares of common stock of General Motors Corporation to the holders of 71,753 shares of the Class A stock of said corporation outstanding and said resolution provided that such capital distribution was to be made on the following basis:

1. With respect to 71,750 shares of the Class A stock of said Senior Investment Corporation there shall be distributed .605 share of common stock of General Motors Corporation upon each share of such 71,750 Class A shares held, and

2. With respect to 3 shares of the Class A stock of said Senior Investment Corporation there shall be distributed .05 share of common stock of General Motors Corporation upon each share of such 3 Class A shares held.

Thereafter the capital distribution as provided for by said resolution was made by said corporation. The 43,300 shares of General Motors Corporation common stock were distributed to petitioner Fred J. Fisher by virtue of his ownership of the said 71,753 shares of the Class A stock of Senior Investment Corporation. The said 43,300 shares of General Motors Corporation common stock were the same shares that petitioner Fred J. Fisher transferred to Senior Investment Corporation upon its organization, in payment of the capital stock of said corporation issued to him.

At the time of said distribution, Senior Investment Corporation did not have any earnings or profits available for distribution but on the contrary had an operating deficit in excess of \$6,000,000.00.

Wherefore, the petitioners pray that this Board may hear the proceedings and find—

3. That the distribution by Senior Investment Corporation of 43,300 shares of General Motors Corporation common stock to the petitioner Fred J. Fisher did not constitute a taxable dividend to him but represented a capital distribution which reduced the cost basis of his stock in said corporation;

4. That there is no deficiency of income tax due from the petitioners, or either of them, for the year 1934;

5. That the petitioners have within three years before the filing of the claim for refund, as aforesaid, overpaid income taxes for the year 1934 in the sum of \$36,290.33 and are entitled to a refund thereof, together with interest as allowed by law;

6. Petitioners further pray that the Board may grant the petitioners such other and further relief as the Board may think just, equitable and proper.

BENJAMIN E. JAFFE,
Attorney for Petitioners,
2406 Fisher Building, Detroit, Michigan.

8 [Duly sworn to by Fred J. Fisher and Burtha M. Fisher;
jurat omitted in printing.]

Exhibit A to petition

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

Office of Internal Revenue Agent in Charge, Detroit Division
555 Federal Building, Detroit, Michigan

JUNE 14, 1940.

IT: Conf.

Mr. FRED J. FISHER and Mrs. BURTHA M. FISHER, Husband and Wife,

2600 Fisher Building, Detroit, Michigan.

SIR AND MADAM: You are advised that the determination of your income tax liability for the taxable year 1934 discloses a deficiency of \$1,231,636.92 as shown in the statement attached.

9 In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Detroit, Michigan for the attention of IT: Conf. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING, *Commissioner,*
By GEO. E. NEAL (signed),
Internal Revenue Agent in Charge.

Enclosures:

Statement.

Form of waiver.

10 IT: Conf. STATEMENT

Mr. Fred J. Fisher, and Mrs. Burtha M. Fisher, Husband and Wife

2600 Fisher Building, Detroit, Michigan

TAX LIABILITY FOR TAXABLE YEAR ENDED DECEMBER 31, 1934

	Liability	Assessed	Deficiency
Income Tax	\$1,280,357.28	\$48,720.35	\$1,231,636.92

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated August 17, 1936; to your protest dated October 28, 1936; to the statements made at conferences held on December 1, 1936 and May 23 and 24, 1940; and to your claim for refund filed December 3, 1937.

If a petition to the United States Board of Tax Appeals is filed against the deficiency proposed herein, the issue set forth in your claim for refund should be made a part of the petition to be considered by the Board in any redetermination of your tax liability. If a petition is not filed, the claim for refund will be disallowed and official notice will be issued by registered mail in accordance with Section 1103 (a) of the Revenue Act of 1932.

In the return as filed, an amount of \$75,000.00 was reported as taxable income representing 3% of the consideration paid for the purchase of annuity contracts.

The contention in your claim for refund that this sum of \$75,000.00 was erroneously reported is denied.

The interest received on the annuity contracts with the several insurance companies is held to be taxable income in the year received.

A copy of this letter has been mailed to your representatives, Messrs. John M. Dooley and Benjamin E. Jaffe, Fisher Building, Detroit, Michigan, in accordance with authority contained in a power of attorney executed by you and on file in the Bureau.

ADJUSTMENTS TO NET INCOME

Net income as disclosed by return-----		\$142, 168. 03
Unallowable Deductions and Additional Income:		
(a) Salary-----	\$7, 500. 00	
(b) Loss on sale of Electric Bond and Share Co. limited by Section 117-----	6, 161. 44	
(c) Loss on sales of stock Fred J. Fisher, Limited by Section 117-----	14, 892. 24	
(d) Gain on sale General Motors (Burtha M. Fisher)-----	404, 945. 32	
(e) Dividends on Senior Investment Com- pany (Fred J. Fisher)-----	1, 723, 881. 25	
(f) Contributions decreased-----	1, 000. 00	2, 158, 389. 25
Total-----		2, 300, 548. 28
Nontaxable Income and Additional Deductions:		
(g) Dividends decreased (Burtha M. Fisher)-----		60, 995. 90
Net Income as adjusted-----		2, 239, 553. 28

EXPLANATION OF ADJUSTMENTS

(e) The distribution of 43,000 shares of common stock of General Motors Corporation by Senior Investment Corporation in 1934 is treated as a taxable dividend inasmuch as Senior Investment Corporation had ample surplus based on transferor's costs of securities acquired from the incorporators.

Section 111 (c) of the Revenue Act of 1934 provides as follows:

12 *"Recognition of gain or loss.*—In the case of a sale or exchange, the extent to which the gain or loss determined under this section shall be recognized *for the purpose of this title, shall be determined under the provisions of Section 112."*

Section 112 (b) (5) provides as follows:

"Transfer to Corporation Controlled by Transferor.—No gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation, and immediately after the exchange such person or persons are in control of the corporation; but in the case of an exchange by two or more persons this paragraph shall apply only if the amount of the stock and securities received by each is substantially in proportion to his interest in the property prior to the exchange."

Since the gain, i. e., the difference between the transferors' cost and the fair market value of stock issued therefor was not recognized for the purposes of title one of the act when Senior Investment Corporation was formed, it is recognized when realized by actual sales of the securities. It is therefore held that the dis-

tribution received from Senior Investment Corporation is taxable as an ordinary dividend.

The dividends have, therefore been increased by the market value of the stock when acquired, or \$1,723,881.25, since you reported no income from this distribution.

* * * * *

COMPUTATION OF TAX

Net income adjusted.....	\$2,239,553.28
Less:	
Personal exemption.....	2,500.00
Balance (Surtax net income).....	2,237,053.28
Less:	
Dividends.....	\$1,799,357.17
Earned income credit (10% of \$3,000.00).....	300.00
	1,799,657.17
Net income subject to normal tax.....	437,396.11
13 Normal tax at 4% on \$437,396.11.....	17,495.84
Surtax on \$2,233,053.28 (Amount in excess of \$4,000.00).....	1,262,361.44
Corrected income tax liability.....	1,280,357.28
Income tax assessed:	
Original, Account No. 200508.....	48,720.36
Deficiency of income tax.....	1,231,636.92

In the Tax Court of the United States

Answer

Filed November 4, 1940

Comes now the Commissioner of Internal Revenue by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed herein admits, and denies as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the petition.

3. Admits that the taxes in controversy are incomes taxes in the sum of \$1,231,636.92 claimed in the notice of deficiency for the calendar year 1934, but denies the remaining allegations contained in paragraph 3 of the petition.

4. (a), (b), (c) and (d). Denies the allegations contained in subparagraphs (a) to (d), inclusive, of paragraph 4 of the petition.

5. (a). Admits the allegations contained in subparagraph (a) of paragraph 5 of the petition.

5. (b), second (c) and (d). Denies the allegations contained in subparagraphs (b), second (c) and (d) of paragraph 5 of the petition.

5, first (c). Admits that Senior Investment Corporation was organized on July 29, 1929, under the laws of the State of Michigan, but denies the remaining allegations contained in the first subparagraph (c) of paragraph 5 of the petition.

Denies generally and specifically each and every allegation contained in the petition not hereinbefore specifically admitted, qualified or denied.

Wherefore, it is prayed that the appeal be denied.

(Signed) J. P. WENZEL,
PAS

*Chief Counsel,
Bureau of Internal Revenue*

Of Counsel:

DEWITT M. EVANS,
Division Counsel,

HOMER J. FISHER,
*Special Attorney,
Bureau of Internal Revenue.*

In the Tax Court of the United States

Order for substitution of parties

On suggestion of death of Fred J. Fisher and notice of the appointment of Executors filed in the above-entitled proceeding, it is

Ordered, that Charles T. Fisher, Edward F. Fisher and Leo M. Butzel, Executors of the Estate of Fred J. Fisher, deceased, are substituted in the place and stead of Fred J. Fisher, deceased, and that henceforth the caption of this proceeding shall be Estate of Fred J. Fisher, deceased, Charles T. Fisher, Edward F. Fisher and Leo M. Butzel, Executors and Bertha M. Fisher, Petitioners, v. Commissioner of Internal Revenue, Respondent.

(Signed) J. E. MURDOCK, *Member.*

Dated: Washington, D. C., October 19, 1942.

In the Tax Court of the United States

Stipulation of facts

Filed at hearing September 29, 1943

It is hereby stipulated and agreed by and between the respective parties hereto, by their attorneys, that the following facts are true and may be considered as evidence in the above entitled cause; provided, however, that either party hereto may introduce further

evidence not inconsistent with the facts herein stipulated as true:

1. This proceeding arises from the determination of a deficiency by the Commissioner of Internal Revenue on a joint return for the calendar year 1934 of Fred J. Fisher and his wife, Burtha M. Fisher, residents of Detroit, Michigan, filed with the Collector of Internal Revenue at Detroit, Michigan. Fred J. Fisher died on July 14, 1941, and his estate has been substituted as petitioner in his stead. The petition appealing from said proposed deficiency was filed herein on September 6, 1940, and has been pending ever since said date.

2. Respondent confesses error in respect to assignment of error 4 (a) appearing on page 2 of the petition herein, and it is agreed that net income as shown in the deficiency notice may be reduced by the sum of \$14,892.24, said amount being a loss sustained by Fred J. Fisher on the sale of securities which is deductible from gross income shown on the joint return, on the authority of *Hellvering v. Janney*, 311 U. S. 189.

3. On January 31, 1934 Fred J. Fisher owned 71,573 shares of the Class A stock of Senior Investment Corporation, a Michigan corporation. On that date he received a distribution on said Class A shares of 43,300 shares of the common stock of General Motors Corporation, without the surrender by him of any of the said Class A shares. Said distribution was made pursuant to the authority contained in a resolution of the Board of Directors of Senior Investment Corporation adopted at a duly called special meeting of the directors, held on January 31, 1934. The action of the directors taken at said meeting of January 31, 1934 was approved, ratified and confirmed by the stockholders at the annual meeting held on May 8, 1934. True copies of the minutes

16 of said meetings are filed herewith, marked "Joint Exhibit A-1." The said distribution was the only distribution made by Senior Investment Corporation during the period from the date of incorporation to July 14, 1941, the date of the death of Fred J. Fisher.

4. The value of said 43,300 shares of General Motors stock at January 31, 1934 was \$1,723,881.25. Respondent in his determination of a deficiency has considered the aforesaid distribution as an ordinary dividend and has included the value of said General Motors shares in the gross income of Fred J. Fisher. In the joint income tax return filed by Fred J. Fisher and Burtha M. Fisher for the year 1934 no taxable income was reported by virtue of the said distribution on the ground that said distribution was a capital distribution to be applied against the cost or basis in the hands of Fred J. Fisher of the aforesaid 71,573 shares of Class A stock of Senior Investment Corporation. The cost or basis to Fred J. Fisher of the aforesaid 71,573 shares of the Class A stock

of Senior Investment Corporation on which said distribution was made was in excess of \$1,723,881.25.

5. Senior Investment Corporation was incorporated on July 29, 1929 under the laws of the State of Michigan, with an authorized capital of 300,000 shares of no par value stock consisting of the following:

100,000 shares Class A stock.

100,000 shares Class B stock.

100,000 shares Class C stock.

The incorporators were Fred J. Fisher, his wife, Burtha M. Fisher, Andrew E. Baldwin and Leo M. Butzel. True copies of the Articles of Association of said corporation and of an amendment thereto filed in December, 1931, are filed herewith, marked "Joint Exhibit A-2." Said amendment filed in December, 1931, is the only amendment made to the original Articles of Association until the amendment of August 29, 1933, hereinafter mentioned. During 1934 Senior Investment Corporation was a

17 personal holding company within the meaning of the pertinent provision of the Revenue Act of 1934.

6. On July 29, 1929, immediately following incorporation, Fred J. Fisher paid in, in exchange for the issuance to him of 71,573 shares of Class A and 79,805 shares of Class C stock of Senior Investment Corporation, assets consisting principally of securities with a market value of \$51,081,808.92, against which there were liabilities of \$8,138,381.16 which were assumed by Senior Investment Corporation. Of the amount so paid in \$372.24 was assigned to and in exchange for the Class C stock, and the balance was assigned to and in exchange for the Class A stock. On the same date Burtha M. Fisher paid in, in exchange for the issuance to her of 9,143 shares of Class A and 10,195 shares of Class C stock of Senior Investment Corporation, assets consisting entirely of securities with a market value of \$5,636,250.00, against which there was a liability of \$150,000.00 which was assumed by Senior Investment Corporation. Of the amount so paid in \$450.00 was assigned to and in exchange for the Class C stock, and the balance was assigned to and in exchange for the Class A stock. The cost to Fred J. Fisher of the assets paid in for the Class A and the Class C stock was \$12,957,242.88, and the cost to Burtha M. Fisher of the assets paid in for the Class A and the Class C stock was \$699,350.00. The cost to Fred J. Fisher and the cost to Burtha M. Fisher, respectively, of the assets paid in for the Class C stock was less than \$500.00. The remaining 10,000 shares of Class C stock were issued to Andrew E. Baldwin on July 29, 1929, without the payment by him of any consideration therefor and as one of the conditions of an employment contract with Senior Investment Corporation.

7. At the same time that the Class A and Class C stock was issued, as aforesaid, Fred J. Fisher paid in, in exchange for the 100,000 shares of Class B stock of Senior Investment Corporation, all of his holdings of stock in Fisher & Company, a Michigan corporation. Said Fisher & Company stock on July 29, 18 1929, had a fair market value of \$40,000,000.00. The cost to

Fred J. Fisher of the Fisher & Company stock was \$894,060.02. The stock of Fisher & Company paid in by Fred J. Fisher in exchange for Class B Stock of Senior Investment Corporation represented approximately one-fifth of the total outstanding stock of Fisher & Company.

8. Among the rights, powers, and privileges of the said Class A stock, Class B stock, and Class C stock were the following:

The C stock alone had voting power. The A stock was entitled to cumulative dividends of \$24.00 per share per annum and no more from the net profits other than the net income from the Fisher & Company stock. The B stock was entitled to receive in each year in dividends the total net income received by Senior Investment Corporation from the Fisher & Company stock up to \$24.00 per share per annum, and, if such net income exceeded the amount of \$24.00 per share, the C stock was entitled to receive, from the excess, dividends of \$1.00 per share, and any amount remaining was to be distributed equally, share for share, between the B and the C stock. Increases in the book value of the Fisher & Company stock were to accrue annually to the B and the C stock in prescribed proportions and the amount accrued to each such class of stock and each share of each class was to be credited in an account on the books of Senior Investment Corporation, subject to distribution only upon the liquidation of the said corporation. In addition to dividends payable out of net income received from the Fisher & Company stock, the C stock was entitled to such dividends as might be declared out of the net profits (except those arising from income from the Fisher & Company stock) remaining after payment of the cumulative dividends on the A stock for all previous dividend periods and the setting aside of dividends thereon for the current dividend period. Upon the liquidation of Senior Investment Corporation the A stock was entitled to receive out of the assets other than the Fisher & Company stock

19 \$600.00 per share plus accrued dividends, and at any time prior to liquidation it was subject to redemption at such price not in excess of \$600.00 as might be agreed upon by the shareholder and the said corporation. Upon liquidation the B stock was entitled to receive out of the Fisher & Company stock then owned by Senior Investment Corporation \$400.00 in cash per share plus the distributable net income therefrom, and the remaining value of the Fisher & Company stock was to be

distributed to the holders of the B and C stock in and up to the amounts which the net increase in value to the B and C stock, and any balance over the amount was to be distributed as assets other than Fisher & The B stock was subject to redemption at any time terms as in the case of liquidation. Upon liquidation was entitled to share ratably in all remaining assets in full of the amounts due the holders of the A and

The dividend rate of \$24.00 per share per annum stock and the redemption values of \$600.00 for the \$400.00 for the B stock were fixed by the incorporation basis of the anticipated earnings and the market securities which were paid in, respectively, for the the B stock.

9. On December 9, 1931 Senior Investment Corporation the 9,143 shares of Class A stock which had been issued to M. Fisher on organization, and thereafter and at all times to this proceeding the outstanding stock of Senior Investment Corporation was owned by the following persons, the shares set opposite their names:

	Class A stock
Fred J. Fisher	71,573
Burtha M. Fisher	None
Andrew E. Baldwin	None

20 The 100,000 shares of Class B stock standing in the name of Fred J. Fisher were cancelled as of June 30, 1933, as part of the reorganization, as more fully set out hereinafter.

10. On June 30, 1933 Senior Investment Corporation was operating at a deficit as shown on its books of \$21,041,234.12 arising at said operating deficit, gain or loss from the disposition of assets paid in for stock on incorporation computed by use of corporate cost or the market value when so paid in.

11. By reason of certain transactions and adjustments which had taken place prior to June 30, 1933, but not recorded on the books until thereafter, the amount of the deficit of \$21,041,234.12 was overstated to the extent of \$5,510,999.99, so that the adjusted deficit at June 30, 1933 was \$20,530,234.13.

12. If during the period of corporate existence from June 30, 1933 gain or loss from the sale or other disposition of assets paid in for stock on incorporation were computed on the transferor's cost, Senior Investment Corporation would have had an adjusted surplus of approximately \$1,000.00.

13. In August, 1933, Senior Investment Corporation consummated a nontaxable reorganization and recapitalization as of June 30, 1933 under the Revenue Act of 1932, and pursuant to the terms of a written Agreement and Plan of Reorganization and Recapitalization. Pursuant to the Agreement and Plan, a new corporation known as Senior Corporation was organized under the laws of the State of Delaware, with an authorized capital stock of 300,000 shares consisting of 100,000 shares of Class A stock, 100,000 shares of Class B stock and 100,000 shares of Class C stock. The written Agreement and Plan was executed by the stockholders of Senior Investment Corporation, by Senior Investment Corporation and by Senior Corporation, the new company, and was approved, ratified and adopted by the directors and stockholders of said corporations at duly convened meetings of such directors and stockholders. A true copy of said Agreement and Plan of Reorganization and Recapitalization is filed herewith, marked "Joint Exhibit A-3."

14. In executing and carrying out the Agreement and Plan the parties relied upon and gave effect to a balance sheet of Senior Investment Corporation taken from its books as of June 30, 1933, which showed an operating deficit of \$21,041,234.12, and a worksheet showing assets and liabilities of Senior Investment Corporation at June 30, 1933, both at book value and market value, and showing also at market value those assets to be transferred to the new company and the assets and liabilities to be retained by Senior Investment Corporation. The parties also were guided by and gave effect to the instructions set out in a memorandum prepared by Counsel for Senior Investment Corporation, advising of the steps to be taken in the consummation of the Agreement and Plan and the reasons therefor. There are being filed herewith a true copy of the said balance sheet at June 30, 1933, taken from the books of Senior Investment Corporation, to which are attached balance sheets of said corporation and of Senior Corporation, immediately after the reorganization, the worksheet showing assets and liabilities of Senior Investment Corporation at June 30, 1933, as aforesaid, and the aforesaid memorandum of Counsel, marked "Joint Exhibit A-4," "Joint Exhibit A-5," and "Joint Exhibit A-6," respectively.

15. In the reorganization, Senior Investment Corporation assigned, transferred, and delivered to Senior Corporation by proper instruments of assignment and transfer, the Fisher & Company stock then held by it, together with cash of \$1,675,000.00 theretofore received by Senior Investment Corporation in redemption of a part of said Fisher & Company stock, and canceled all of the Class B stock outstanding. Senior Corporation, in exchange,

issued to Fred J. Fisher the 100,000 shares of its Class B stock, having the same rights, powers, and privileges as the shares of Class B stock of Senior Investment Corporation before the reorganization, as stated in its Certificate of Incorporation.

With respect to assets other than stock of Fisher & Company, and other than the \$1,675,000.00 hereinbefore mentioned, Senior Investment Corporation assigned, transferred, and delivered to Senior Corporation, by proper instruments of assignment and transfer, cash of \$325,000.00, and certain notes and accounts receivable with a face value of \$10,838,325.63, or a total of \$11,163,325.63. In exchange therefor Senior Corporation issued 71,573 shares of its Class A stock and the 100,000 shares of its Class C stock direct to the holders of the Class A and Class C stock of Senior Investment Corporation, as shown in paragraph 9 hereof, being on the basis of one share of Class A stock and one share of Class C stock, respectively, of Senior Corporation for each share of Class A stock and Class C stock of Senior Investment Corporation. All remaining assets were retained by Senior Investment Corporation. Such remaining assets had a market value of \$6,988,122.92, and the liabilities, none of which were assumed by Senior Corporation, amounted to \$1,320,295.33.

16. Pursuant to the Plan of Reorganization and Recapitalization the deficit of \$21,041,234.12 was allocated between the two corporations on the basis of the ratios existing between the market value of the assets retained by Senior Investment Corporation, less the liabilities, and the market value of assets transferred to Senior Corporation other than Fisher & Company stock. For this purpose the \$1,675,000.00 referred to in paragraph 15 hereof was included in assets other than Fisher & Company stock transferred to Senior Corporation. On that formula 30.62672% of the total deficit, or \$6,444,239.86, was retained by Senior Investment Corporation, and 69.37328% thereof, or \$14,596,994.26, was assumed by Senior Corporation.

17. The dividend rights and the rights on liquidation, dissolution or redemption of the Class A and Class C stock as set out in the Articles of Association of Senior Investment Corporation were likewise allocated between the Class A and Class C stock of Senior Investment Corporation and of Senior Corporation on the basis of the same ratios. The rights of the Class A and Class C stock of Senior Investment Corporation after the reorganization were set out in an amendment to the Articles of Association of Senior Investment Corporation filed August 29, 1933, and the rights of the Class A, Class B, and Class C stock of Senior Corporation were set out in the Certificate of Incorporation

of Senior Corporation filed with the Secretary of the State of Delaware on August 26, 1933.

18. The aforesaid amendment to the Articles of Association of Senior Investment Corporation contained a provision reading as follows:

"(3) *Transfers to capital.*—The earnings and profits of the corporation to the extent of \$6,444,239.96 shall from time to time be transferred to capital or capital surplus or surplus, and anything herein contained or otherwise to the contrary notwithstanding, no dividends, whether cumulated or current, shall be paid or set aside on any shares of stock of the corporation until earnings and profits of the corporation in the sum of \$6,444,239.96 have been so transferred to capital or capital surplus or surplus."

The Certificate of Incorporation of Senior Corporation contained a similar provision prohibiting the payment of dividends on any shares of its stock until earnings and profits to the extent of \$14,596,994.26 had been transferred to capital or capital surplus or surplus.

19. In carrying out the reorganization and recapitalization pursuant to the Plan, the amendment to the Articles of Association of Senior Investment Corporation, filed as aforesaid, reduced the capital stock of the corporation from 300,000 shares without par value to 100,000 shares of Class A stock with a par value of \$5.00 per share and 100,000 shares of Class C stock with a par value of

\$1.00 per share. The outstanding certificate of Class A and 24 Class C stock of Senior Investment Corporation were not cancelled but were stamped with a legend reading as follows:

"Class A stock became stock of the par value of \$5.00 per share and Class C stock became stock of the par value of \$1.00 per share, and Class B stock was eliminated and the powers, preferences and rights, and the qualifications, limitations or restrictions with respect to the Class A stock and Class C stock were amended by amendment to the Articles of Incorporation effective August 29, 1933, pursuant to the Plan of Reorganization and Recapitalization dated August 23, 1933."

True copies of the Certificate of Incorporation of Senior Corporation and of the Amendment to the Articles of Association of Senior Investment Corporation filed August 29, 1933, are filed herewith, marked "Joint Exhibits A-7 and A-8," respectively.

20. True copies of minutes of meetings of the directors and stockholders of Senior Investment Corporation, and of the first meeting of the directors of Senior Corporation, at which action

was taken as set out in said minutes," are filed herewith, marked "Joint Exhibits A-9 to A-13, inclusive," and are as follows:

JOINT EXHIBIT

A-9—Minutes of Special Meeting of Directors of Senior Investment Corporation, August 24, 1933;

A-10—Minutes of Special Meeting of Stockholders of Senior Investment Corporation, August 24, 1933;

A-11—Minutes of Special Meeting of Stockholders of Senior Investment Corporation, August 28, 1933;

A-12—Minutes of Special Meeting of Directors of Senior Investment Corporation, August 28, 1933;

A-13—Minutes of First Meeting of Directors of Senior Corporation, August 28, 1933.

21. The books and records of Senior Investment Corporation for the period subsequent to June 30, 1933, permit a determination of earnings and profits and losses computed on three bases, which are as follows:

25 Basis (a): The use of transferor's cost as to assets acquired on organization in July, 1929, and of corporate cost of assets thereafter acquired.

Basis (b): The use of corporate cost, or value at July 29, 1929, for assets acquired on organization, and of corporate cost for assets thereafter acquired.

Basis (c) The use of market value as of July 30, 1923 for assets acquired prior thereto and retained in the reorganization, and of corporate cost for assets thereafter acquired.

The earnings and profits and losses of Senior Investment Corporation for the last six months of 1933 and for the month of January, 1934, on the above three bases, and after giving effect to adjustments resulting from audits of its returns by the Treasury Department, and accepted by Senior Corporation, were as follows:

Year	Basis (a)	Basis (b)	Basis (c)
July 1, 1933 to Dec. 31, 1933	(\$615,762.65)	(\$615,762.65)	(\$229,679.68)
Month of January 1934	21,407.88	21,407.88	23,731.38
Total for above 7-months period	(594,354.77)	(594,354.77)	(205,950.30)

(Figures in parentheses denote net loss.)

22. Senior Investment Corporation, both before and after the reorganization and recapitalization, in determining its Federal tax liabilities on its tax returns, computed its taxable income by the use of transferor's cost as to assets acquired by it on organization on July 20, 1929, and of corporate cost for assets thereafter acquired. Senior Corporation, in determining its Federal tax liabilities on its tax returns, treated the reorganization of

26 ⁶June 30, 1933 as a nontaxable reorganization, and computed its taxable income on the basis prescribed in such instances by the applicable Revenue Acts.

BENJAMIN E. JAFFE,

R. M. O'HARA,

Counsel for Petitioners.

J. P. WENCHEL, JR.,

Chief Counsel, Bureau of Internal Revenue,

Counsel for Respondent.

Joint Exhibit A-1

SPECIAL MEETING OF BOARD OF DIRECTORS OF SENIOR INVESTMENT CORPORATION

Minutes of Special Meeting of the Board of Directors of the Senior Investment Corporation at 2400 Fisher Building, City of Detroit, Michigan, on the 31st day of January 1934.

A quorum was present. Mr. Fisher, president of the corporation, presided and Mr. Maynard, secretary, recorded the minutes. Upon motion duly made and seconded, the following resolutions were unanimously adopted.

"Resolved, that this corporation make a capital distribution of a total of 43,300 shares of the common stock of General Motors Corporation owned by this corporation to the holders of the 71,573 shares of the Class A stock of this corporation outstanding, said capital distribution to be made on the following basis:

27 "(a) With respect to 71,570 shares of the Class A stock of this corporation there shall be distributed .605 share of common stock of General Motors Corporation upon each share of such 71,570 Class A shares held; and

"(b) With respect to 3 shares of the Class A stock of this corporation, there shall be distributed .05 share of common stock of General Motors Corporation upon each share of such 3 Class A shares held.

"Further Resolved, That the proper officers of this corporation be and they are hereby authorized and directed to cause said capital distribution to be fully consummated as provided in the foregoing resolution, to cause said 43,300 shares of the common stock of General Motors Corporation to be transferred and delivered to the holders of the Class A stock of this corporation as they may be entitled thereto pursuant to the foregoing resolution and to do any and all such things and to execute all such instruments and documents as may be necessary to carry out the foregoing resolution."

There being no further business to come before the meeting, on motion the same adjourned.

HORACE S. MAYNARD,
Secretary.

SENIOR INVESTMENT CORPORATION WAIVER OF NOTICE OF SPECIAL
MEETING OF BOARD OF DIRECTORS

We, the undersigned, being all of the directors of the Senior Investment Corporation, do hereby waive notice of the time, place and purpose of the meeting of the Board of Directors of said corporation and do fix the 31st day January, 1934, at 10 o'clock in the morning as the time, and Room 2400 Fisher Building, in the City of Detroit, Michigan as the place of said meeting.

28 And we do hereby consent to the transaction of any kind all business that may come before said meeting.

Dated: January 31st, 1934

F. J. FISHER,
LEO BUTZEL,
ANDREW E. BALDWIN,
JOHN C. MOONS,
HORACE S. MAYNARD.

HORACE S. MAYNARD,
Secretary.

MINUTES OF ANNUAL MEETING OF STOCKHOLDERS SENIOR INVEST-
MENT CORPORATION

May 8th, 1934

The annual meeting of stockholders of Senior Investment Corporation was held on the twenty-fourth floor of the Fisher Building at 2 o'clock in the afternoon of Tuesday, May 8th, 1934, in accordance with due notice as provided in the by-laws.

Mr. Fisher, president of the corporation, presided as Chairman and Mr. Maynard, secretary of the corporation, acted as Secretary of the meeting.

Mr. Fisher submitted proxies which together with his own holdings represented 100% of the outstanding capital stock.

The minutes of the last annual meeting of the stockholders and of the special meetings subsequent thereto were read and approved.

The minutes of all meetings of the Board of Directors held since the last annual stockholders meeting were presented to the meeting.

On motion duly made and seconded, the following resolution was unanimously adopted:

29 "Resolved, that all the acts of the directors and officers of this corporation as shown by the minutes of the directors meetings since the last annual meeting of the stockholders be and they hereby are in all respects approved, ratified and confirmed."

The meeting then proceeded to the election of a board of directors to hold office until the next annual meeting of the stockholders and until their successors are elected and qualify.

The following were thereupon duly and unanimously elected directors of the corporation:

Fred J. Fisher.

Andrew E. Baldwin.

Leo M. Butzel.

John C. Moons.

Horace S. Maynard.

There being no further business, the meeting adjourned.

HORACE S. MAYNARD.

Secretary.

Joint Exhibit A-2

(Corporation for pecuniary profit)

ARTICLES OF INCORPORATION OF SENIOR INVESTMENT CORPORATION

We, the undersigned, desiring to become incorporated under the provisions of Act No. 84 of the Public Acts of 1921 (as amended), entitled "An act to provide for the organization, regulation and classification of domestic corporations; to prescribe their rights, powers, privileges and immunities; to prescribe the conditions upon which corporations may exercise their franchises," etc., do hereby make, execute and adopt the following Articles of Association, to wit:

30

ARTICLE I

The name assumed by this corporation and by which it shall be known in law is:

SENIOR INVESTMENT CORPORATION

ARTICLE II

This corporation intends to proceed under Section 1 of Chapter 1, Part 1, of the above act.

ARTICLE III

The purposes of this corporation are as follows:

(1) To purchase, exchange or otherwise acquire, underwrite, hold sell and/or sell short, exchange, pledge, hypothecate, or

otherwise dispose of or deal in, the stocks, bonds, notes, debentures or other evidences of indebtedness, obligations of and/or interests in any private, public, quasi-public, or municipal corporation, domestic or foreign, or of any domestic or foreign state, government or governmental authority, or of any political or administrative subdivision or department thereof, and all trust, participation or other certificates of, or receipts evidencing, interest in any such securities and obligation, and notes and other obligations of individuals, partnerships, associations and syndicates, and to pay for any such securities, evidences of indebtedness and obligations, in cash, or to issue in exchange therefor in payment thereof its own stock, bonds, debentures or other obligations or securities or to make payment therefor by any other lawful means of payment whatsoever.

(2) To do any and all acts and things for the preservation, protection improvement and enhancement in value of any and all such securities or evidences of interest therein, and to aid by loan, subsidy, guaranty or otherwise those issuing, creating or responsible for any such securities or evidences of interest therein as aforesaid by original subscription, underwriting, loan, participation in syndicates, or otherwise, and irrespective of whether or not such securities or evidences of interest therein be fully
31. paid or subject to further payments; and to make payment thereon as called for in advance of calls or otherwise; and to underwrite or subscribe for the same, conditionally or otherwise, and either with a view to investment or for resale or for any other lawful purpose.

(3) To enter into, make, perform and carry out, or cancel and rescind, contracts of underwriting of the securities of any corporation, association, partnership, firm, trustee, syndicate, individual, government, state, municipality, or other political or government division or subdivision, domestic or foreign, or of any combination, organization or entity, domestic or foreign, and to act as manager of any underwriting or purchasing or selling syndicate.

(4) To lend money on call or time and with or without collateral or other security.

(5) To buy, exchange or otherwise acquire, own, hold, deal in, sell and otherwise dispose of goods, wares and merchandise, and personal property of every character and description and all interests of any character therein.

(6) To buy, exchange or in any way acquire, hold, own, possess, sell and in any way dispose of real property of every kind and description and all interests of every kind in real property.

(7) To engage in any kind of manufacturing business or process and to carry on any business or process whereby raw materials or

personal property of every kind are developed, transformed or improved into finished or more finished materials, products or property; and to buy, exchange, contract for, lease, construct and otherwise acquire, take, hold and own, and to sell, mortgage, lease or otherwise dispose of, plans for such manufacturing process and/or development; and to manage, operate, maintain and improve the same.

(8) To search for, prospect and explore for all kinds of minerals and mineral deposits, and for oil and gas; to mine, mill, drill for, convert, prepare for market and otherwise produce and deal in minerals and mineral deposits, oil and gas and the products, by-products and residual products thereof; to purchase or in
32 any manner acquire, to own, hold and operate, and to sell, lease, encumber or in any manner dispose of, minerals, mineral lands, oil or gas lands and mineral rights, and oil, gas or mineral rights of all kinds, and to construct, or in any manner acquire, to own and hold; and to sell, encumber, or in any manner dispose of, buildings, works, workshops, laboratories, machinery, power plants, pipe lines and other property necessary or convenient to that end, but not to operate as a public utility.

(9) To buy, exchange or in any way acquire, take, hold, own, operate, sell and dispose of refineries, smelters, reduction plants and any and all other plants for the extraction of minerals from ores or valuable products from subterranean or surface liquids, together with all tanks, plants, works and appurtenances necessary, proper or convenient therefor.

(10) To buy, exchange or in any way acquire, hold, own and operate telegraph and telephone lines, transportation lines by land or water, and pipe lines, necessary, useful or convenient in the judgment of the officers of this company for its own business; and to improve, maintain and operate the same; and to sell, mortgage, lease or otherwise dispose of the same.

(11) To engage in a general building and construction business; to construct houses, stores, office buildings, manufacturing plants, bridges, and buildings foundations and structures of every class and description for others and/or to so construct and erect the same on properties held, owned, or possessed by the company for sale, lease, exchange or other disposition by the company.

(12) To do engineering for businesses and industries of every kind and nature.

(13) To engage in research, experimental and laboratory work in all the various branches of science.

(14) To buy, exchange or otherwise acquire, hold, own, operate, sell and otherwise dispose of water rights and water supplies together with all necessary or convenient pipe lines reservoirs, dams, ditches and other appurtenances necessary or useful in the

33 judgment of the officers of this company for its own business; and to manage, operate, maintain, improve, extend and develop the same.

(15) To carry on a stock and bond brokers business in all its branches.

(16) To transact a general real estate agency and brokerage business, including the management of estates; to act as agent, broker or attorney in fact for any persons, partnerships or corporations in buying, selling and dealing in real property and any and every estate and interest therein; to make or obtain loans upon such property; and to supervise, manage and protect such property and all loans and all interests in and claims affecting the same.

(17) To act as brokers, agents and adjusters in the business of any kind or class of insurance in any or all of its branches.

(18) To do a general commission merchants and selling agents business; and to act as broker, agent, factor, and representative for and in every character and line of business.

(19) To apply for, obtain, register, purchase or otherwise acquire, and to own, operate, introduce, and to sell, assign or otherwise dispose of, any trade marks, trade names, patents, inventions, or any interest in the same, or any improvements, processes and discoveries used in connection with or secured under letters patent of the United States or of any sovereignty, governmental body or power whatsoever and wheresoever situate; and to use, develop and grant licenses in respect of or otherwise employ for profit any such trade marks, patents, licenses, processes, discoveries, and the like, or any such properties or rights.

(20) To purchase or otherwise acquire, maintain and operate timber and lumber yards; to purchase, prepare for market, buy, sell, import, export, market and otherwise trade and deal in logs, timber and lumber, rough and dressed, and the products thereof.

34 (21) To purchase, sell and deal in timber lands, cutover lands and real estate; to lease, purchase or otherwise acquire, to own and hold, and to sell, lease, encumber or in any manner dispose of and to deal in timber lands, timber and logging rights and logging and turpentine, privileges; and to extract, distill and refine turpentine, resin and other forest products, and to sell or otherwise dispose of the same; to cut and remove timber, and to manufacture and sell wood pulp, wood solvents, wood fiber and wood products and by-products, and paper, paper boards, paper substitutes, boxes, containers, turpentine, stockfood, resin, naval stores and other articles made wholly or in part of wood or wood products; and to construct or in any manner acquire, to own and operate, and to sell, lease, encumber or otherwise dispose of, works, mills, plants, factories, warehouses, machinery, tram-

ways, logging roads and other facilities necessary or convenient to that end.

(22) To make contracts for and to open, keep, audit, examine or certify to the correctness of books and accounts of individuals, partnerships and corporations; and to do a general auditing and accounting business so far as may be permitted by law.

(23) To manage, counsel in respect of and direct the affairs of any business, or commercial or manufacturing undertaking of individuals, associations or corporations, and to carry on in an advisory and consultive capacity a general business in engineering, accounting, appraisement and related branches.

(24) To purchase, exchange or otherwise acquire, operate and manage ranches, farms and farm lands, and in connection therewith the doing of a general sheep, cattle and livestock-raising business; and to farm the said lands and to raise agricultural products thereon; and to raise and sell cattle and livestock of all kinds.

(25) To make, enter into and carry out any arrangements which may be deemed to be for the benefit of the corporation, with any corporation, association, partnership, firm, trustee, syndicate, individual, government, state, municipality or other political or government division or subdivision, domestic or foreign, or
35 of any combination, organization or entity, domestic or foreign; to obtain therefrom or otherwise to acquire by purchase, lease, assignment or otherwise, any powers, rights, privileges, immunities, franchises, guarantees, grants and concessions; to hold, own, exercise, exploit, dispose of and realize upon the same and to undertake and prosecute any business dependent thereon; and to cause to be formed, to promote, and to aid in any way in the formation of any corporation, association or organization of any kind, domestic or foreign, for any such purposes.

(26) To organize or cause to be organized under the laws of the State of Michigan or of any other state, district, territory, nation, colony, province or government, a corporation or corporations for the purpose of accomplishing any or all of the objects for which the corporation or corporations is or are organized; and to dissolve, wind up, liquidate, merge or consolidate any such corporation or corporations, or to cause the same to be dissolved, wound up, liquidated, merged or consolidated.

(27) To exercise all the rights, powers and privileges whatsoever of ownership of all stocks, bonds, and other evidences of indebtedness or interest owned or held by this company, including the right to vote thereon for any and all purposes.

(28) To borrow or raise moneys for any of the purposes of the corporation and from time to time, without limit as to amount, to draw, make, accept, endorse, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures and

7

other negotiable or nonnegotiable instruments and evidences of indebtedness, and to secure the payment thereof and of the interest thereon by mortgage on, or pledge, conveyance or assignment in trust of, the whole or any part of the assets of the corporation, real, personal or mixed, including contract rights, whether at the time owned or thereafter acquired, and to sell, pledge or otherwise dispose of such securities or other obligations of the corporation for its corporate purposes; to confer, in any manner permitted

36 by law, upon the holders of any bonds, debentures or obligations of the corporation, secured or unsecured, the right to convert the principal thereof into stock of the corporation upon such terms and conditions as may be deemed advisable.

(29) To make any guaranty respecting stocks, dividends, securities, indebtedness, interest, contracts or other obligations, so far as the same may be permitted to be done by a corporation organized under the laws of the State of Michigan.

(30) To cause to be formed, merged or reorganized or liquidated, and to promote, take charge of and aid in any way permitted by law, the formation, merger, liquidation or reorganization of any corporation, association or organization of any kind, domestic or foreign; and to promote, take charge of and aid in any way permitted by law, the formation, merger, reorganization or liquidation of, any corporation, association or entity in the United States or abroad.

(31) To enter into, make, perform and carry out or cancel and rescind contracts of every kind for any lawful purposes pertaining to its business with any person, entity, syndicate, partnership, association, corporation or governmental, municipal or public authority, domestic or foreign.

(32) To have one or more offices to carry on all or any of its operations and businesses in any of the states, districts, territories or colonies of the United States and in any and all foreign states or countries; and without restriction or limit as to amount to purchase or to otherwise acquire, hold, own, mortgage, sell, convey or otherwise dispose of real and personal property of every class and description in any of the same, subject to the laws of such state, district, territory, colony or country.

(33) In general, to carry on any other business in connection with the foregoing, whether manufacturing, trading or otherwise, and to have and exercise all the powers conferred by the law of Michigan upon corporations formed under the Act hereinbefore referred to, and to do any or all of the things hereinbefore set forth to the same extent as natural persons might or could do.

37 (34) To carry on any business, work or thing whatsoever which the corporation may deem proper or convenient

in connection with any of the foregoing purposes or otherwise, or which may be calculated, directly or indirectly, to promote the interests of the corporation or to enhance the value of its property.

(35) The foregoing clauses shall be construed both as objects and powers; and it is hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the general powers of this corporation, but are in furtherance of and in addition to, and not in limitation of, the general powers conferred by these Articles and by the laws of the State of Michigan.

It is the intention that the purposes, objects, and powers specified in this Article III and all subdivisions thereof, except as otherwise expressly provided, in nowise be limited or restricted by reference to or inference from the terms of any other clause or paragraph of this Article, and that each of the purposes, objects and powers specified in this Article shall be regarded as independent purposes, objects and powers, nor shall the expression of one thing be deemed to exclude another not expressed, although it be of like nature.

ARTICLE IV

The principal place where the company will operate is the City of Detroit, in the County of Wayne, State of Michigan.

The address of the main office in Michigan is: 2203 Fisher Building, Detroit, Michigan.

The address of the main office outside of the State of Michigan is: none.

ARTICLE V

(1) The total capital stock authorized is three hundred thousand (300 000) shares of capital stock, all without any par or nominal value; consisting of the following classes of stock without par value:

38 Class A stock: One hundred thousand (100,000) shares.

Class B stock: One hundred thousand (100,000) shares.

Class C stock: One hundred thousand (100,000) shares.

(2) The holders of Class A stock and Class B stock shall not be entitled to vote for Directors nor upon any other matter, but the sole and exclusive voting power shall belong to and be vested in the holders of Class C stock.

(3) Class A stock.—The shares of Class A stock shall be entitled to receive, when and as declared by the Board of Directors out of the surplus or net profits of the corporation, cumulative dividends at the rate of Twenty-four Dollars (\$24.00) per share per annum, and no more, payable at least semi-annually on the 1st day of February & August of each year, and at such other times as the

Board of Directors may from time to time determine. Such dividends may, in the discretion of the Board of Directors be paid either in cash or—in whole or in part—in stocks or other securities, other than Fisher and Company stock, at any time held by this corporation, at the market value of such stock or securities at the time of such distribution. In the event of any liquidation or dissolution or winding up—whether voluntary or otherwise—of the corporation, the class A stock shall be entitled to receive in full out of the assets—whether capital or surplus—the sum of Six Hundred Dollars (\$600) per share, plus an amount equal to all accrued but unpaid dividends thereon, before any payment shall be made to or on any of the remaining classes of stock of this corporation, except as provided in paragraph (c) of section (4) of this Article. All outstanding Class A stock shall be redeemed at a price of Six Hundred Dollars (\$600) per share, plus the amount of all accrued and unpaid dividends thereon on the final termination of the corporate existence, whether the same be at the end of the term presently authorized or any lawful renewals or extensions thereof.

39 Class A stock may be redeemed prior thereto in whole or in part from time to time, at the option of the Board of Directors, at the above redemption price. If less than all of the outstanding Class A stock is to be redeemed, the stock to be redeemed shall be selected by lot in such manner as the Board of Directors shall determine. Notice of the intention to redeem prior to the absolute date of redemption above set shall be given by mailing a notice thereof, specifying the date and place of redemption—and if less than all, the certificates to be redeemed—to each holder of record of shares to be redeemed at the last address of such holder appearing on the stock registry of this corporation.

(4) Class B stock.—(a) The shares of Class B stock of this corporation shall be entitled to receive each year in dividends the total net income—as hereinafter defined—received by this corporation from the stock of Fisher & Company, a Michigan corporation, at any time held by this corporation, up to Twenty-four Dollars (\$24.00) per share per annum. If said net income from said Fisher & Company stock shall in any year exceed Twenty-four Dollars (\$24.00) per share per annum on the outstanding Class B stock and the amount of said Twenty-four Dollars (\$24.00) per share per annum shall have been declared and paid or set aside for all outstanding Class B shares, a dividend up to One Dollar (\$1.00) per share shall be paid therefrom to the Class C stock; any remaining net income from Fisher & Company stock shall be distributed equally, share for share, between Class B and Class C stock. To determine the net income arising from said Fisher & Company stock, there shall be deducted from the gross amount of all dividends and income from said Fisher & Company

stock the amount of all taxes (including franchise or excise taxes) required to be paid by this corporation on said Fisher & Company stock and on or in respect of the aliquot portion of the assets of this corporation represented by said stock, and all taxes on the income therefrom, plus the cost and expense of handling and managing said stock by this corporation as determined by the Board of Directors of this corporation. If the net profits or surplus of this corporation be not sufficient to pay the dividends provided in this paragraph (a), the dividends herein provided for shall be paid only to an amount equal to the existing surplus or net profits of this corporation; any increase in value of Fisher & Company stock shall not be considered or included in determining the existing surplus or net profits of this corporation for this purpose.

(b) In addition to the dividends so to be paid on the Class B and Class C shares any increase in any year in the value of the shares of Fisher & Company stock then held by this corporation as such increase shall be shown by the books of said Fisher & Company at the end of the fiscal year of said Fisher & Company ending in such year of this corporation shall accrue in each year to said Class B and Class C stock of this corporation in the proportions and in the amounts which the same would have accrued and been distributed to said Class B and Class C stock of this corporation if the amount of said increase in such year had been received in cash by this corporation as dividends on said shares of said Fisher & Company stock in addition to the amount of dividends on said Fisher & Company stock actually received by this corporation in cash in such year and the last sentence of paragraph (a) of this section (4) were not operative beyond the amount of the dividends in fact received in cash from Fisher & Company. An account shall be kept on the books of this corporation which shall take up all increases in value of Fisher & Company stock held by this corporation as often as each such increase is shown by the books of said Fisher & Company as aforesaid. Said account shall at all times show the amount of such increase accrued to each of the classes of Class B and Class C stock and to each share of each of said classes then outstanding. If in any year there shall be a decrease in the value of the shares of Fisher & Company as shown on the books of Fisher & Company at the end of the fiscal year of Fisher & Company ending in such year of this corporation, such decrease shall be taken up in said account on the books of this corporation and the amount of such decrease deducted from the total net credit of the accruals of increases of Fisher & Company stock to that time shown in said account to the credit of the class B and Class C stock respectively which deduction shall be made from

each of said Class B and Class C in the proportion of the number of shares of each of said classes then outstanding, the shares of each class to be considered and treated as a unit for this purpose. The credits *accrued* pursuant to the foregoing provisions of this paragraph (b) shall not be required to be distributed in dividends but shall be required to be distributed only pursuant to paragraph (c) of this section (4).

(c) On any liquidation, dissolution or winding up of the affairs of this corporation—whether voluntary or involuntary—the Class B stock shall be entitled to receive out of said Fisher & Company stock then held by this corporation four hundred dollars (\$400.00) in cash on each share of said Class B stock plus the amount of any net income from said Fisher & Company stock as net income is defined in the penultimate sentence of paragraph (a) of this section (4) which would have been distributable to said Class B stock if there had been no liquidation, dissolution or winding up. The right of the Class B stock to so receive said four hundred dollars (\$400.00) and undistributed net income in the foregoing portion of this paragraph (c) described shall be free from and superior to the rights and claims of the holders of all other classes of stock of this corporation. Any then remaining value of the shares of stock in Fisher & Company held by this corporation shall be distributed to the Class B and Class C stock in the proportions and up to the amounts which the net increase in value of said Fisher & Co. any stock shall to that time have accrued to said Class B and Class C stock then outstanding under the provisions of paragraphs (b) of this Section (3) and any balance over the sum of the amounts so accrued shall be distributed as assets other than Fisher & Company stock are by these Articles provided to be distributed.

Any net income as defined in the penultimate sentence
42 of paragraph (a) of this section (4) which would have been distributable to the Class C stock if there had been no liquidation, dissolution or winding up shall be distributed to said Class C stock on said liquidation, dissolution or winding up.

All of the outstanding Class B stock shall be redeemed on the termination of the corporate existence, whether the same be at the end of the term presently authorized or any lawful renewals or extensions thereof. The price on such redemption shall be the same as such shares would have been entitled to receive in distribution as aforesaid if this corporation were to be liquidated, dissolved, or wound up at the time of such redemption. The shares of Class B stock may be purchased or redeemed at the discretion of

the Board of Directors from time to time or all at one time by making the same payment to the shares so to be purchased or redeemed which such shares would have been entitled to receive in distribution as aforesaid if this corporation were to be liquidated, dissolved or wound up at the time of such redemption.

If less than all of the outstanding Class B stock is to be redeemed, the stock to be redeemed shall be selected by lot in such manner as the Board of Directors shall determine. Notice of the intention to redeem Class B stock shall be given by mailing a notice thereof, specifying the date and place of redemption—and if less than all, the certificates to be redeemed—to each holder of record of shares to be redeemed at the last address of such holder appearing on the stock registry of this corporation.

(5) Class C stock: In addition to any dividends payable out of the income of Fisher & Company stock as hereinbefore provided, dividends may be declared upon the Class C stock of this corporation out of any surplus or net profits of the corporation—except such as may arise out of or result from any income of the stock of Fisher & Company held by this corporation as provided in paragraph (a) of the preceding section (4) of this Article—remaining after full cumulative dividends on the Class A
43 stock for all previous dividend periods shall have been paid and for the current semi-annual period shall have been declared and paid or set aside.

If and after the Class B stock hereunder shall have been redeemed, the amount of the net income from said Fisher & Company stock—as hereinbefore defined—shall be available for the payment of dividends on said Class C stock if, when, and as declared by the Board of Directors, but not to an amount which shall exceed the net profits or surplus of this corporation.

In the event of any liquidation, dissolution or winding up of the corporation, the Class C stock, after payment in full to the holders of the other classes of stock on such liquidation, dissolution or winding up, as hereinbefore provided, shall be entitled, to the exclusion of the holders of all other classes of stock hereunder, to share ratably in all remaining assets of the corporation.

(6) On any redemption of any of the Class A or Class B stock of this corporation, the corporation may deposit the aggregate redemption price with any bank or trust company, either in the City of Detroit or City of New York, named in such notice, payable in amount aforesaid to the respective record holders of the shares to be redeemed, on endorsement and surrender of their certificates in this corporation: and thereupon said holders shall

cease to be stockholders with respect to such shares, and from and after the making of such deposit said holders shall have no interest in or claim against the corporation with respect to such shares but shall be entitled only to receive said moneys from said bank or trust company without interest. Any moneys unclaimed at the end of six years from the date of the said deposit shall be repaid to the corporation. No stock so redeemed shall ever be reissued by the corporation.

(7) The total amount of stock without par value subscribed and actually paid in is two hundred eighty thousand five hundred eighty-seven (280,587) shares without nominal or par value, consisting of eighty thousand five hundred eighty-seven (80,587) shares of Class A stock, one hundred thousand (100,000) shares of Class B stock, and one hundred thousand (100,000) shares of Class C stock.

(8) The total amount of Class A stock subscribed, to wit, eighty thousand five hundred eighty-seven (80,587) shares, has been paid in property. The description and value at which each item is taken is as follows, viz.:

STOCKS

(Stocks listed on public exchanges evaluated at closing prices of June 29, 1920)

Number of shares	Class of stock	Name of company	Net valuation
75,150	Common	General Motors Corp	\$5,636,250.00
1,000	Common	Continental Illinois Bank & Trust Co	810,000.00
375	Common	Peoples Wayne County Bank	76,500.00
1,375		Guardian Detroit Group, Inc	206,250.00
		Liberty National Bank	480.00
1,000	Preferred	United Aircraft & Transport Corp	85,000.00
300	Common	United Aircraft & Transport Corp	27,800.00
1,000	Common	Fokker Aircraft Corp	49,875.00
3,810	Preferred	General Chromium Corp	381,000.00
5,995	Common	General Chromium Corp	12,500.00
1,515	Common	Udylite Process Co	266,942.40
10,550	Common	Mexican Seaboard Oil Co	559,150.00
200	Common	Detroit Wac Paper Co	160,000.00
	\$85,000 interest in stock of	General Reduction	85,000.00
50	Common	Consumers Tobacco Co	5,000.00
556	A	Plymouth Road Development Corp	3,150.00
76	Common	Red Run Land Co	7,600.00
5	Common	Grosse Ile Land & Development Corp	500.00
		Forward	8,382,407.40

45

PLEDGED STOCKS

The blocks of stock following, each of which is taken at the value set opposite the same:

Forward *Net valuation*
\$8,382,407.40

Number of shares	Class of stock	Name of company	Value amount
400,000	Common	General Motors Corp.	\$26,750,000.00
5,625	Common	National City Bank	2,233,125.00
			38,983,125.00

Subject to and assuming a pledge of all of said stocks en bloc to secure the sum of \$1,940,000.00
and having in the aggregate a net equity or value of 37,043,125.00

3,500	Common	Allis Chalmers	\$917,000.00
19,000	Common	General Motors Corp.	1,425,000.00
7,200	Common	Mexican Seaboard Oil Co.	351,000.00
2,500	Common	Western Union	460,000.00
4,000	Common	Radio	336,500.00
			3,550,100.00

Subject to and assuming a pledge of said stocks en bloc to secure the sum of \$3,226,304.56
and having in the aggregate a net equity or value of 323,795.44

1,500	Common	Loose Wiles	\$101,025.00
600	Common	Sparks Withington (Old)	149,000.00
2,800	Common	General Motors Corp.	210,000.00
3,600	Common	Electric Autolite	599,400.00
1,000	Common	Electric Investors	210,000.00
			1,270,425.00

Subject to and assuming a pledge of all of said stocks en bloc to secure the sum of \$1,015,000.00
and having in the aggregate a net equity or value of 255,425.00

8,500	Common	Electric Investors	\$1,785,000.00
5,000	Common	General Motors Corp.	375,000.00
5,000	Common	Loose Wiles	338,750.00
1,250	Common	Mexican Seaboard Oil Co.	66,250.00
			2,565,000.00

Subject to and assuming a pledge of all of said stocks en bloc to secure the sum of \$777,310.00
and having in the aggregate a net equity or value of 1,787,680.00

Forward 47,792,442.84

46

COMMODITIES

Forward \$47,799,442.84

	Value amount
15,000 bales of cotton	1,407,000.00
Subject to and assuming a pledge to secure the sum of	1,250,808.28
and having a net equity or value of	156,191.72

BONDS

Amount	Percent	Name	Amount
\$10,000.00	6	Bloomfield Township School	\$10,599.90
50,000.00	6	Cleveland Heights School	52,755.50
15,000.00	6	Defiance Water Works	15,983.05
25,000.00	5	Ecorse School District	23,640.65
5,000.00	5	Flint	11,297.15
6,000.00	5	Flint	
15,000.00	5½	Hamtramck School	15,456.60
25,000.00	5½	Miami Conservancy	25,520.00
50,000.00	6	Muskegon Refunding	50,909.00
10,000.00	6	Owosso Water Works	10,267.50
5,000.00	5½	Norwalk Ohio School	5,740.38
10,000.00	6	Pontiac Water Works	10,411.50
50,000.00	6	River Rouge Water	55,364.00
20,000.00	6	Royal Oak School	20,716.00
7,000.00	5½	Springwells Township	7,437.60
25,000.00	5	Grand Rapids School	24,968.75
25,000.00	4½	Michigan Highway	25,641.87
15,000.00	4¾	East Lansing Water Works	15,483.00
5,000.00	5	Durand Sewers	5,173.00
10,000.00	5	Erin & Warren School District	10,299.00
Gross total			48,352,000.01
Surplus applied to payment of Class C stock			0.00
Net total value applied to payment of Class A stock			48,352,000.01

(9) The total amount of Class "B" stock, to wit, 100,000 shares, has been paid in property, the description and value of which is as follows, viz:

Valuation

A block of stock in Fisher & Company, a Michigan Corporation, consisting of the following: 1,150 shares of Class "A", 2,700 shares of Class "B", 2,800 shares of Class "C", 751 shares of Founders stock. \$40,000,000.00

(10) The total amount of Class "C" stock, to wit, 100,000 shares has been paid for in property by applying thereto in payment thereof Four Hundred Nine and 01/100 Dollars (\$409.01) of the securities itemized and listed in paragraph (8) of this Article; said amount of Four Hundred Nine and 01/100 Dollars (\$409.01) constituting the surplus value of the said securities after deducting therefrom the amount taken in payment of all of the subscribed Class A stock as shown in said paragraph (8).

(11) The amount of Actual capital in both cash and property which this corporation owned and possessed at the time of executing these Articles is Eighty-eight Million Three Hundred Fifty-two Thousand Six Hundred Nine and 01/100 Dollars (\$88,352,609.01).

ARTICLE VI

The term of this corporation is fixed at thirty (30) years.

ARTICLE VII

The names of stockholders, their residences and shares subscribed by each are:

Name and address	Class A	Class B	Class C
Fred J. Fisher, 2203 Fisher Bldg., Detroit, Michigan	71,194	100,000	93,619
Burtha M. Fisher, 54 Arden, Detroit, Michigan	9,393		6,379
Andrew E. Baldwin, 2202 Fisher Bldg., Detroit, Michigan			
Leo M. Butzel, 2288 First Nat'l Bank Bldg., Detroit, Michigan			
	80,587	100,000	100,000

48

ARTICLE VIII

The names and addresses of officers and directors for the first year of the corporation's existence are as follows:

Name and address	Office
Fred J. Fisher, 2203 Fisher Bldg., Detroit, Michigan	President and Director.
Burtha M. Fisher, 54 Arden, Detroit, Michigan	Director.
Andrew E. Baldwin, 2202 Fisher Bldg., Detroit, Michigan	Vice-President and Director.
Leo M. Butzel, 2288 First Nat'l Bank Bldg., Detroit, Michigan	Director.
Horace Maynard, 14th Flr., General Motors Bldg., Detroit, Michigan	Secretary and Treasurer.

ARTICLE IX

Special statements pertaining to the primary organization of this corporation and not included in the foregoing requirements:

(a) None of the stock of Fisher & Company of any kind or class at any time held by this corporation shall be sold, mortgaged or pledged, or contract for any of the same be made, or any interest in any of the same be created in any person, firm or corporation without the consent in writing of at least two-thirds of the outstanding Class B stock of this corporation.

(b) Except as hereinafter provided in this paragraph, no holder of any stock of this corporation shall be entitled as of right to purchase or subscribe for any part of any unissued stock of this corporation, or any new or additional stock of any class to be issued by reason of any increase in the authorized capital stock of this corporation, or of any issue of securities of the corpora-

tion convertible into stock, whether such stock or securities be issued for money or for a consideration other than money. When any such unissued stock or any such additional authorized issue of new stock or such securities convertible into stock are to be issued and disposed of, it may be issued and disposed of by the Board of Directors to such persons, firms, corporations or associations and upon such terms as the Board of Directors may in their discretion determine without offering to the stockholders then of record or any class of stockholders any thereof on the same terms or any terms; provided however, that no Class C stock shall be issued or sold except after having first been offered for subscription to the holders of the then outstanding Class C stock according to their respective shares.

(c) In the absence of fraud no contract or other transaction with any other corporation or any individual, association or firm, shall be in any way affected or invalidated by the fact that any of the directors of the corporation are interested in such other corporation, association or firm, or personally interested in such contract or transaction, nor shall any director so interested be liable to account to the corporation for any profit made by him from or through any such contract or arrangement so adopted by the Board of Directors or which may be ratified and approved by the holders of the Class C stock, by reason of such director holding such office or the fiduciary relationship thereby established. Any director of this corporation may vote upon any contract or other transactions between this corporation and any subsidiary or affiliated corporation without regard to the fact that he is also a director of such subsidiary or affiliated corporation.

(d) Any contract, transaction or act of the corporation or of the Board of Directors, which shall be ratified by a majority of a quorum of the voting stock at any annual meeting or at
50 any special meeting called for such purpose shall be as valid and binding as though ratified by every stockholder of the corporation; provided, however, that any failure of the voting stockholders to approve or ratify such contract, transaction or act, when and if submitted, shall not be deemed in any way to render the same invalid nor to deprive the directors or officers of their right to proceed with such contract, transaction or act.

(e) The Directors may from any funds available, after all dividend payments on the Class A and Class B stocks have been made or set aside for the current semi-annual period, devote so much of the remaining available funds of the company—other than any net income arising from Fisher & Company stock held by this corporation—to one or more religious, charitable, scientific,

literary, or educational purposes, and to this end may make payment of all or any part of such funds to such corporation, trust, community chest, fund, foundation, post or organization of war veterans, institution, church, school, association, or person, or any number of the foregoing, as in the sole discretion of the Board of Directors is best qualified to carry out the purposes at the time sought to be fulfilled or accomplished. The matters stated in this paragraph (e) of Article IX shall be construed as objects and purposes of this corporation as well as stating the powers of the Board of Directors with respect to such objects and purposes.

(f) Authority is hereby specifically conferred upon the Board of Directors of the corporation at any time and from time to time, to mortgage, pledge or hypothecate the property of the corporation, in whole or in part,—subject to the limitations respecting Fisher & Company stock, set forth in paragraph (a) of this Article—for the purpose of securing any obligation of the corporation that may from time to time be created or incurred.

In witness whereof, we, the parties designated, as provided by law, by the parties associating as under Article VII of these Articles, for the purpose of giving legal effect to these Articles, hereunto sign our names this 26th day of July, A. D. 1929.

FRED J. FISHER.

BURTHA M. FISHER.

ANDREW E. BALDWIN.

LEO M. BUTZEL.

STATE OF MICHIGAN.

County of Wayne, ss:

On this 26th day of July, A. D. 1929, before me, a Notary Public in and for said county, personally appeared Fred J. Fisher, Burtha M. Fisher, Andrew E. Baldwin and Leo M. Butzel, known to me to be the persons named in and who executed the foregoing instrument, and severally acknowledged that they executed the same freely and for the intents and purposes therein mentioned.

[SEAL]

IRMA J. PACEY, *Notary Public*.

Wayne County, Michigan.

My commission expires Feb. 20, 1931.

STATE OF MICHIGAN.

County of Wayne, ss:

Fred J. Fisher, Andrew E. Baldwin and Burtha M. Fisher, being duly sworn, do depose and say that they are three of the organizers of Senior Investment Corporation, whose Articles of Association are hereto attached; that they know the property described in Article V of such Articles of Association and taken in payment for capital stock, and that the same has been actually transferred to such corporation, and further say that said prop-

erty is of the actual value of Eighty-eight Million Three Hundred Fifty-two Thousand Six Hundred Nine and 01/100 Dollars (\$88,352,609.01) and that eighty thousand five hundred eighty-seven (80,587) shares of Class A stock, and that one hundred thousand (100,000) shares of Class B stock and one hundred thousand (100,000) shares of Class C stock have been issued in payment for the same.

And further say not.

FRED J. FISHER.

BURTHA M. FISHER.

ANDREW E. BALDWIN.

Subscribed and sworn to before me this 26th day of July, A. D. 1929.

[SEAL]

IRMA J. PACEY, *Notary Public*,

Wayne County, Michigan.

My commission expires Feb. 20, 1931.

Filed July 29th, 1929.

United States of America

(State seal)

THE STATE OF MICHIGAN

DEPARTMENT OF STATE

To all to whom these presents shall come:

I, John S. Haggerty, Secretary of State of the State of Michigan and Custodian of the Great Seal thereof, Do Hereby Certify that the annexed copy of articles of association of the Senior Investment Corporation has been compared by me with the record on file in this Department and that the same is a true copy thereof, and the whole of such record.

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of the State at the Capitol, in the City of Lansing, this 31st day of July, A. D. 1929.

[SEAL]

JOHN S. HAGGERTY.

Secretary of State.

P. O. Address—2402 Fisher Building, Detroit, Michigan

We, the undersigned, being the president and secretary of the Senior Investment Corporation, a corporation organized under

the provisions of Act No. 84 of the Public Acts of 1921, as amended, do hereby certify, as required by Section 9, Chap. 1, Part II of said act and by section 43, of Act. No. 327 of the Public Acts of the State of Michigan for the year 1931:

That a meeting of the stockholders of said corporation expressly called for the purpose of amending its articles of association and held at the office of said company on the 30th day of November, A. D. 1931, it was resolved, by the vote of the holders of all of the shares of each class of shares entitled to vote and all of the shares of each class whose right, privileges or preferences are so changed that the Articles of Association relating to capital stock be amended as follows:

(a) By striking out that paragraph of Article V captioned "(3) Class A Stock" and inserting in lieu thereof a paragraph to be captioned "(3) Class A Stock" which shall read as follows:

"ARTICLE V

✓ (3) *Class A stock.*—(a) The shares of Class A stock shall be entitled to receive, when and as declared by the Board of Directors out of the surplus or net profits of the corporation, cumulative dividends at the rate of Twenty-Four Dollars (\$24.00) per share per annum, and no more, payable at least semiannually on the 1st days of February and August of each year, and at such other times as the Board of Directors may from time to time determine.

54 Such dividends may, in the discretion of the Board of Directors be paid either in cash or—in whole or in part—in stocks or other securities, other than Fisher and Company stock, at any time held by this corporation, at the market value of such stock or securities at the time of such distribution. In the event of any liquidation or dissolution or winding up—whether voluntary or otherwise—of the corporation, the Class A stock shall be entitled to receive in full out of the assets—whether capital or surplus—payable either in assets of the corporation other than cash or in cash or partly in cash and partly in such assets, the sum of Six Hundred Dollars (\$600.00) per share, plus an amount equal to all accrued but unpaid dividends thereon before any payment shall be made to or on any of the remaining classes of stock of this corporation, except as provided in paragraph (c) of section (4) of this Article. All outstanding Class A stock shall be redeemed on the final termination of the corporate existence, whether the same be at the end of the term presently authorized or any lawful renewals or extensions thereof, at a price of Six Hundred Dollars (\$600.00) per share, plus the amount of all accrued and unpaid dividends thereon, all payable either in assets of the corporation other than cash or in cash or partly in cash and partly in

such assets as may be agreed between the shareholder whose shares are to be redeemed and the Company, subject to the approval of the holders of the Class A shares as hereinafter specified.

Class A stock may be redeemed, in whole or in part, at any time prior to the absolute date of redemption fixed in the preceding paragraph, from time to time, at the option of the Board of Directors at such price per share as may be agreed between the shareholder whose shares are to be redeemed and the Company; provided, however, that such agreed price shall in no event exceed Six Hundred Dollars (\$600.00) per share and that such redemption and the price agreed to be paid shall in each instance be approved in writing by the holders of not less than eighty percent (80%) of the Class A shares then outstanding; and there shall be added to such agreed redemption price the amount of all accrued and unpaid dividends on the shares to be redeemed. The

55 agreement and approval for such optional redemption price may provide that such optional redemption price may be paid in assets of the corporation other than cash or in cash or partly in such assets and partly in cash. If less than all of the outstanding Class A stock is to be redeemed, the stock to be redeemed shall be selected in such manner as the Board of Directors may determine. In the event it shall be determined to pay for the redemption of any or all of the shares of the Class A stock at any time outstanding either entirely or partially in assets of the corporation other than cash, the assets so to be utilized and the credit to be received therefor on the redemption price shall be fixed by agreement between the Company and the shareholder whose Class A shares are to be redeemed, subject at all times, however, to the approval in writing of the holders of not less than eighty percent (80%) of the Class A shares then outstanding. Notice of the intention to redeem prior to the absolute date of redemption above set shall be given by mailing notice thereof, specifying the date and place of redemption—and if less than all, the certificates to be redeemed—to each holder of record of shares to be redeemed at the last address of such holders appearing on the stock registry of this corporation.”
and

(b) By striking out paragraph (6) of Article V and inserting in lieu thereof a paragraph (6) which shall read as follows:

“(6) On any redemption of any of the Class A or Class B stock of this corporation, the corporation may deposit the aggregate redemption price or the assets of the corporation other than cash to be utilized in such redemption with any bank or trust company, either in the City of Detroit or in the City of New York named in such notice, payable or deliverable as aforesaid to the respective record holders of the shares to be redeemed, on endorsement and

surrender of their certificates in this corporation; and thereupon said holders shall cease to be stockholders with respect to such shares and from and after the making of such deposit said
56 holders shall have no interest in or claim against the corporation with respect to such shares but shall be entitled only to receive said moneys or assets other than cash from said bank or trust company without interest. Any moneys or assets other than cash unclaimed at the end of six (6) years from the date of the said deposit shall be repaid or redelivered to the corporation. No stock so redeemed shall ever be reissued by the corporation."

In witness whereof, we hereunto sign our names this 30th day of November, A. D. 1931.

F. J. FISHER, *President*.

HORACE S. MAYNARD, *Secretary*.

STATE OF MICHIGAN,
County of Wayne, ss:

On this 30th day of November, A. D. 1931, before me, a Notary Public in and for said County, personally appeared Fred J. Fisher and Horace S. Maynard, known to me to be the persons who executed the foregoing instrument and severally acknowledged that they executed the same freely and for the intents and purposes therein mentioned.

[SEAL]

IRMA J. PACEY, *Notary Public*,

Wayne County, Michigan.

My Commission Expires: Feb. 13, 1935.

Joint Exhibit A-3

AGREEMENT AND PLAN OF REORGANIZATION AND RECAPITALIZATION OF SENIOR INVESTMENT CORPORATION

This Agreement and Plan of Reorganization and Recapitalization entered into this 23rd day of August, A. D. 1933, by
57 and between Senior Investment Corporation, a corporation organized and existing under the laws of the State of Michigan (hereinafter sometimes referred to as the Old Corporation), party of the first part, Senior Corporation, a corporation to be organized under the laws of the State of Delaware (hereinafter sometimes referred to as the New Corporation), party of the second part, and Fred J. Fisher, Burtha M. Fisher and Andrew E. Baldwin, all of Detroit, Michigan, being the owners of all of the outstanding capital stock of the Old Corporation, parties of the third part, witnesseth:

Whereas, the parties hereto desire to reorganize and recapitalize Senior Investment Corporation, pursuant to the Plan of Reorganization and Recapitalization hereinafter set out (sometimes

hereinafter referred to as the Plan), said reorganization to be effected by the transfer of certain of the assets of said Senior Investment Corporation to said New Corporation and the issuance in exchange therefor of the capital stock of said New Corporation to the stockholders of the Old Corporation pro rata in accordance with their holdings of stock in the Old Corporation pursuant to Part I of the Plan, and said recapitalization to be effected by the reduction in the capital and capital stock of the Old Corporation and the surrender and cancellation of the outstanding Class B stock of the Old Corporation, pursuant to Part II of the Plan.

Now, therefore, for and in consideration of the mutual covenants and agreements of the parties hereto as hereinafter set forth, and the sum of One Dollar (\$1.00) by each of the parties hereto to the other in hand paid, receipt whereof by them is hereby acknowledged, it is mutually agreed and understood as follows:

a. The parties hereto adopt and agree to carry out and consummate the Plan of Reorganization and Recapitalization of Senior Investment Corporation, a Michigan Corporation, in accordance with the terms and provisions of said Plan of Reorganization and Recapitalization as hereinafter set out as follows, to-wit:

58 **PLAN OF REORGANIZATION AND RECAPITALIZATION OF SENIOR INVESTMENT CORPORATION, A MICHIGAN CORPORATION**

PART I

(A) Organize a corporation under the name of Senior Corporation under the laws of the State of Delaware with an authorized capital stock of 300,000 shares consisting of 100,000 shares of Class A stock of the par value of \$10.00 per share, 100,000 shares of Class B stock of the par value of \$10.00 per share, and 100,000 shares of Class C stock without par value.

(B) Cause the Old Corporation to transfer to the New Corporation the assets and property of the Old Corporation, specified on Annex A hereto, at the values stated in said Annex A.

(C) Cause the New Corporation, in exchange for the transfer of said assets and property, to issue to the stockholders of the Old Corporation 71,573 shares of said Class A stock, 100,000 shares of said Class B stock, and 100,000 shares of said Class C stock, of the New Corporation to the holders of the Class A stock, Class B stock, and Class C stock, of the Old Corporation, at the rate of one share of Class A stock, Class B stock, and Class C stock, of the New Corporation for each share respectively of Class A stock, Class B stock, and Class C stock, of the Old Corporation held by such stockholders.

(D) In connection with the organization of the New Corporation and issuance of its said Class A stock, Class B stock, and Class C stock, as aforesaid, the Certificate of Incorporation of said New Corporation shall set out the powers, preferences and rights and the qualifications, limitations or restrictions thereof of the said Class A stock, Class B stock, and Class C stock, of the

59 New Corporation in such manner as to substantially preserve the powers, preferences and rights, and the qualification, limitations or restrictions thereof which the holders of the Class A stock, Class B stock, and Class C stock, of the Old Corporation now have as affecting the assets and property of the Old Corporation, specified in Annex A, to be transferred to the New Corporation, pursuant to Part I of the Plan.

PART II

Upon the consummation of Part I of the Plan of Reorganization and Recapitalization as above set out—

(A) Amend the article of Incorporation of the Old Corporation so as to—

(1) Reduce the capital of the Old Corporation by changing the authorized capital stock of the Old Corporation to 200,000 shares of stock consisting of 100,000 shares of Class A stock with par value of \$5.00 per share, and 100,000 shares of Class C stock with par value of \$1.00 per share.

(2) Set out the rights, voting power, preferences and restrictions of the said Class A stock and Class C stock in such manner as to substantially preserve the rights, voting power, preferences and restrictions which the holders of the Class A stock and Class C stock of the Old Corporation now have as affecting the assets and property which the Old Corporation will retain after the transfer to the New Corporation of the assets and property of the Old Corporation specified in Annex A.

(B) Cause the holders of the Class B stock of the Old Corporation to surrender the same for cancellation, and provide for the appropriate stamping of the certificates of Class A stock and Class C stock now outstanding to evidence the change in the capital structure of the Old Corporation caused by the consummation of this Plan.

60 b. The parties hereto agree to cause to be held the necessary meetings of the stockholders and directors of the Old Corporation and the necessary resolutions to be adopted thereat adopting and ratifying the Plan of Reorganization and Recapitalization as above set out, confirming the action of the officers of the Old Corporation in executing the same and agreeing to become a party thereto, authorizing the acts and things required to be

done by said Plan of Reorganization and Recapitalization, authorizing the proper officers of the Old Corporation to make or consent to any amendments of or additions to said Plan by said officers deemed necessary or advisable to fully carry out the intent and purpose of said Plan and generally authorizing and directing the proper officers of the Old Corporation to do all things and to execute any and all papers and documents by the said officers deemed necessary or advisable to consummate and put into full force and effect said Plan of Reorganization and Recapitalization and any amendments thereof or additions thereto.

c. The parties hereto agree to cause to be organized the New Corporation as provided by Part I of the Plan of Reorganization and Recapitalization and to cause to be held the necessary meetings of the stockholders and directors of said New Corporation and the necessary resolutions to be adopted thereat, adopting and ratifying the Plan of Reorganization and Recapitalization as above set out, agreeing to be and become a party thereto with the same force and effect as if it had executed the same in the first instance, authorizing the acts and things required to be done by said Plan of Reorganization and Recapitalization, including the issuance of its shares of stock as provided in the Plan, and authorizing the proper officers of the New Corporation to make or consent to any amendments of or additions to said Plan by said officers deemed necessary or advisable to fully carry out the intent and purpose of said Plan and in general authorizing and directing the proper officers of the New Corporation to do all things and to execute any and all papers and documents by said officers
61 deemed necessary or advisable to consummate and put into full force and effect said Plan of Reorganization and Recapitalization.

d. It is mutually understood and agreed by the parties hereto that all costs and expenses of consummating said Plan of Reorganization and Recapitalization including filing and franchise fees and taxes, stamp taxes, and attorneys' fees shall be borne and paid by the Old Corporation and the New Corporation in the proportions as the values of the assets and property transferred to the New Corporation and the assets and property retained by the Old Corporation bear to the total value of all the assets and property of the Old Corporation.

e. It is mutually understood and agreed by the parties hereto that it is the intention of the parties hereto that upon the consummation of the said Plan of Reorganization and Recapitalization the sum total of the rights, powers and privileges of the

holders of the Class A stock, Class B stock, and Class C stock, of the New Corporation and the rights, powers and privileges of the holders of Class A stock and Class C stock of the Old Corporation shall be substantially equal to the rights, powers and privileges which the holders of Class A stock, Class B stock, and Class C stock of the Old Corporation have prior to the consummation of such Plan as affecting the assets and property which the Old Corporation has prior to the consummation of said Plan.

In witness whereof the parties of the first and second parts have caused this agreement to be executed in their respective corporate names, and their respective corporate seals to be hereunto affixed and duly attested by their respective corporate officers thereunto duly and lawfully authorized, and the parties of the third part have hereunto set their hands and seals, all as of the day and year first above written.

SENIOR INVESTMENT CORPORATION.,

By FRED J. FISHER, *Its President.*

By HORACE S. MAYNARD, *Its Treasurer.*

62 Signed, sealed and delivered in the presence of:

JOHN M. DOOLEY,

JOHN C. MOONS,

SENIOR CORPORATION,

By FRED J. FISHER,

Its President.

By HORACE S. MAYNARD,

Its Treasurer.

Signed, sealed and delivered in the presence of:

JOHN M. DOOLEY,

AGNES C. SPECK.

[L. S.]

[L. S.]

[L. S.]

FRED J. FISHER,

BERTHA M. FISHER,

ANDREW E. BALDWIN.

JOHN M. DOOLEY,

JOHN C. MOONS,

H. S. M., *Secy.*

63

ANNEX A

Cash	\$2,000,000.00
10,500 Shares of Class A Stock of Fisher & Company, a Michigan Corporation,	
50,000 Shares of Class B Stock of Fisher & Company, a Michigan Corporation,	
25,000 Shares of Class C Stock of Fisher & Company, a Michigan Corporation,	

751 Shares of Founders Stock of Fisher & Company, a Michigan Corporation..... \$8,000,000.00

The following assets as shown on the books of Senior Investment Corporation as of June 30, 1933:

Amounts due from:

Alfred J. Fisher.....	\$71,005.54
Lawrence P. Fisher.....	1,130,018.49
William A. Fisher.....	228,703.21
Fisher & Company.....	31,272.91
Fred J. Fisher.....	1,100,000.00
Edward F. Fisher.....	34,851.87

The Six Messrs. Fisher by virtue of payments on joint and several note at the Bankers Trust Company, New York, N. Y.....

501,108.63

	3,096,960.73	
Fred J. Fisher.....	5,802,747.40	
Burtha M. Fisher.....	1,814,386.22	
Sundry Accounts Receivable.....	64,231.28	10,838,325.63

Total..... 29,838,325.63

65

Joint Exhibit A-4

Senior Investment Corporation, Balance Sheet, June 30, 1933, Before the Reorganization

ASSETS

	Book value		Market value	
	Detail	Amount	Detail	Amount
Cash in banks and on hand:				
New York banks (open).....	\$2,217,344.28		\$2,217,344.28	
Michigan banks (open).....	135,668.28		135,668.28	
Cash on hand.....	26,266.77		26,266.77	
Together.....	2,379,279.33		2,379,279.33	
Add—closed Detroit banks.....	241,197.80	\$2,620,477.13	150,000.00	\$2,529,279.27
Equity in broker's accounts:				
Stocks per list (short) (Ex. 2).....	296,240.54		687,862.54	
Cash balance at brokers.....	1,096,660.94	770,440.44	1,096,660.94	378,818.46
Marketable stocks and bonds:				
Listed common stocks (Ex. 3).....	7,608,299.44		3,574,291.66	
Listed preferred stocks (Ex. 4).....	99,307.54		111,612.54	
Bonds—industrial, utilities, railroad, and foreign (Ex. 5).....	1,394,540.18		1,093,426.22	
Bonds—Municipal (Ex. 6).....	416,939.00		366,370.00	
Bonds—Federal Farm Loan.....	44,750.00	19,563,836.68	46,000.00	8,191,650.38
Other investments:				
Stocks not listed (Ex. 7).....	950,966.00		820,004.10	
Fisher & Company.....	18,325,000.00		8,000,000.00	
Real Estate & Real Estate Syndicates (Ex. 8).....	126,475.97	9,411,442.01	50,000.00	8,870,004.10
Notes and accounts receivable:				
Fisher Brothers and Fisher & Company (Ex. 9).....	3,096,960.73		3,096,960.73	
Fred J. Fisher.....	5,802,747.40		5,802,747.40	
Burtha M. Fisher.....	1,814,386.22		1,814,386.22	
Sundry accts. receivable (Ex. 10).....	64,231.28	10,838,325.63	64,231.28	10,838,325.63
Properties:				
Office furniture and fixtures.....	15,255.44		15,255.42	
Less—depreciation.....	5,299.66	9,955.78	5,299.64	9,955.78
Deferred charges:				
Prepaid taxes.....		8,384.22		8,384.22
		\$3,222,862.21		27,826,448.15

**Senior Investment Corporation, Balance Sheet, June 30, 1933, Before the
Reorganization—Continued**

LIABILITIES

	Book value		Market value	
	Detail	Amount	Detail	Amount
Current liabilities:				
Provision for funds on deposit which were withdrawn from General Motors Liquidation Account at Brokers	\$1,000,000.00		\$1,000,000.00	
Provision for Federal Income Tax on 1933 profits to date	305,622.03		305,622.03	
Sundry liabilities	3,873.30	\$1,309,495.33	3,873.30	\$1,309,495.33
Land contracts payable		10,800.00		10,800.00
Capital:				
Authorized:				
Class A 100,000 shares				
Class B 100,000 shares				
Class C 100,000 shares				
Issued:				
Class A 71,573 shares	12,943,800.00		12,943,800.00	
Class B 100,000 shares	10,000,000.00		10,000,000.00	
Class C 100,000 shares	1.00	\$2,943,801.00	1.00	\$2,943,801.00
Deficit:	13,260,431.16		13,260,431.16	
Balance Jan. 1, 1933—Add net loss sustained during 6 mos. ended 6-30-33 (Ex. 12)	7,780,802.96	21,041,234.12	7,780,802.96	21,041,234.12
Depreciation of securities:				
Difference between book value of investments and market value at June 30, 1933				35,396,414.00
		\$3,222,802.21		\$3,222,802.21

67. Senior Investment Corporation, balance sheet after reorganization per books, as at June 30, 1933

ASSETS

Demand deposits and cash on hand	\$379,479.27
Equity in broker's accounts:	
Cash balances at brokers	\$1,026,680.90
Less—Stocks sold short at sale prices	296,246.50
	730,434.40
Marketable stocks and bonds:	
Listed common stocks	7,608,269.49
Listed preferred stocks	99,367.50
Bonds—Industrial, utilities, railroad, and foreign	1,394,540.84
Bonds—Municipal	416,949.00
Bonds—Federal Farm Loan	44,770.00
	9,565,836.28
Other investments:	
Stocks not listed	979,666.94
Real estate and real estate syndicates	129,475.97
	1,109,142.91
Claims against receivers of closed banks	241,197.85
Office furniture and fixtures, less allowance for depreciation	9,975.78
Prepaid taxes	8,864.29
	12,059,536.58

Note "A."—Balances before reorganization.

Deduct:

Cost of assets transferred to senior corporation	51,163,325.63
Deficit transferred to senior corporation	14,796,044.16

67 Senior Investment Corporation, balance sheet after reorganization per books as at June 30, 1933—Continued

LIABILITIES

Provision for funds on deposit which were withdrawn from General Motors liquidation account at brokers	\$1,000,000.00
Provision for federal income tax	355,622.03
Sundry liabilities	3,873.30
Land contract payable	10,800.00
Total liabilities	1,320,295.33

Capital	Shares authorized	Shares issued
Paid-in capital, segregated as follows:		
Capital stock:		
Class "A"	100,000	\$71,573
Class "C"	100,000	100,000
Contributed capital		437,865.10
Reserve for depreciation of assets on reorganization		5,594,593.19
Reserve for anticipated earnings		4,686,783.06
Total paid-in capital		17,183,481.21
Deficit as at June 30, 1933		6,444,239.96
Total capital—(Note A)		10,739,241.25

	Paid-in capital	Deficit	Capital
	\$2,943,801.00	\$21,041,204.12	\$61,902,566.88
	65,760,319.79	14,596,594.16	51,163,325.63
Balances after reorganization	17,183,481.21	6,444,239.96	10,739,241.25

69

SENIOR CORPORATION

Balance sheet after reorganization per books as at June 30, 1933

ASSETS

Demand deposits in banks	\$2,000,000.00
Notes and accounts receivable:	
Fisher Brothers and Fisher & Company	\$3,096,960.73
Fred J. Fisher	5,862,747.40
Burtha M. Fisher	1,814,386.22
Sundry Accounts	64,231.28

Stock of Fisher & Company	10,838,325.63
	8,000,000.00
	20,838,325.63

CAPITAL

Capital Stock:	Shares authorized	Shares issued
Class A	100,000	71,573
Class B	100,000	100,000
Class C	100,000	100,000
Contributed capital		\$1,715,730.00
Reserve for anticipated earnings		19,122,595.63
		14,596,594.16
		35,435,319.80
Less, deficit transferred from Senior Investment Corporation		14,596,594.16
		20,838,325.63

Joint Exhibit A-6

CHARTER PROVISIONS

DIVIDENDS

Originally all assets other than Fisher & Company stock were allocated to the Class A stock. For the purpose of reorganization, assets other than Fisher & Company stock of the market value of \$12,838,325.63 are transferred to the New Delaware Corporation and assets other than Fisher & Company stock of the market value of \$5,667,827.19 are retained by the Old Corporation.

		<i>Percent</i>
To New Delaware Corporation.....	\$12, 838, 325. 63	.6937328
Retained by Old Corporation.....	5, 667, 827. 19	.3062672

In the Old Corporation Class A stock is entitled to \$24.00 per share cumulative dividends out of income from assets other than Fisher & Company stock. To maintain the same rights on reorganization the Class A stock in the New Delaware Corporation should be entitled to .6937328% of \$24.00 or \$16.65 per share of cumulative dividends, and Class A stock in the Old Michigan Corporation should be entitled to .3062672% of \$24.00 or \$7.35 per share of cumulative dividends.

The Class B stock in the New Delaware Corporation should be entitled to all the net income on the Fisher & Company stock up to \$24.00 per share and should be entitled to all the rights to which the Class B stock in the Old Corporation is entitled. Also the allocation of rights as to Fisher & Company stock as between Class A, Class B, and Class C stock in the Old Corporation should be carried out in the Charter of the New Delaware Corporation.

CLASS C STOCK

In the present corporation after dividends up to \$24.00 per share on the Class B stock has been paid out of the net income received from the Fisher & Company stock, a dividend of \$1.00 per share is to be paid on Class C stock, and the balance of such net income is distributed equally share for share between the Class B stock and Class C stock. These provisions should be carried over into the Articles of Incorporation of the New Delaware Corporation.

74 In the present corporation, in addition to any dividends payable out of the income from Fisher & Company stock, dividends may be declared upon the Class C stock out of a surplus or net profits of the corporation resulting from assets other than Fisher & Company stock after full cumulative and current

dividends on Class A stock have been paid. Same provisions should be included in the Articles of Incorporation of the New Delaware Corporation: The cumulative dividends required to be paid in such event shall be at the rate of \$16.65 per share of Class A stock of the New Delaware Corporation from July 29, 1929 to the date of reorganization. In the Old Corporation, the Charter should provide that such dividend may be declared on Class C stock after the cumulative and current dividend on Class A stock have been paid. The cumulative dividends required to be paid in such event shall be at the rate of \$7.35 per share of Class A stock of the Old Corporation from July 29, 1929 to the date of reorganization.

In the present Corporation, it is provided that after Class B stock is redeemed, the net income from Fisher & Company stock shall be available for the payment of dividends on Class C stock, but not to an amount which shall exceed the net profits or surplus of the corporation. The same provision shall be made in the Articles of Incorporation of the New Delaware Corporation.

REDEMPTION

The Charter of the New Delaware Corporation and the Old Michigan Corporation should provide that Class A and Class B stock may be redeemed at such prices as may be determined by the Board of Directors with consent of 80% of such stock outstanding, but in no event at a price in excess of the amount to which such classes of stock are entitled to on liquidation or dissolution. Provided, also that such Class B stock may be redeemed in cash or Fisher & Company stock, or partly in cash and partly in Fisher & Company stock, the value of such Fisher & Company stock to be taken at the book value thereof as shown by Fisher & Company. Provide that Class A stock upon redemption may be paid for by cash or by assets or partly by cash and partly by assets.

LIQUIDATION OR DISSOLUTION

In the present Corporation, on liquidation or dissolution, Class A stock is entitled to \$600.00 per share out of the assets other than Fisher & Company stock. On reorganization, the New Delaware Corporation will have .6937328 of the assets other than Fisher & Company stock of the present Corporation (on the basis of market value) and the Old Michigan Corporation will have .3062672 of such assets. On reorganization Class A stock of the New Delaware Corporation should be entitled to \$416.24 per share and Class A stock of Old Michigan Corporation should be entitled to \$183.76 per share. The present provisions as to liquidation and dissolu-

tion contained in the Charter of the present Corporation should be carried over into the Articles of the New Delaware and the amended articles of the Old Michigan Corporations. Provide that on liquidation or dissolution of New Delaware Corporation such price may be paid in assets other than Fisher & Company stock or in cash or partly in cash and partly in such assets. In Old Corporation provide that on liquidation or dissolution the price provided for may be paid in assets or cash or partly in assets and partly in cash.

As to Class B stock in the New Delaware Corporation, the Charter should provide that Class B shares should be entitled to receive shares of Fisher & Company stock in kind up to \$400.00 per share of Class B stock outstanding or in cash from the proceeds of Fisher & Company stock up to \$400.00 per share or partly in cash out of the proceeds of Fisher & Company stock and partly in Fisher & Company stock up to \$400.00 per share, the value of such Fisher & Company stock to be taken at the book value thereof as shown by Fisher & Company. This right of the Class B stock is superior to all other Classes of stock.

In present Corporation provision is made for crediting increases in value of Fisher & Company stock as between Class B and 76 C stocks. Provide in New Delaware Corporation for crediting such increase after Fisher & Company stock has a value of \$38,325,000.00. Provide also that \$1,675,000 of the capital surplus shall be allocated to the Class B stock. This amount represents the sum received by Senior Investment Corporation upon the redemption of a portion of the Fisher & Company stock held by Senior Investment Corporation.

In the present Corporation, it is provided that after \$400.00 per share has been paid to Class B stock, any then remaining value of the shares of stock in Fisher & Company held by the corporation should be distributed to the Class B and Class C stock in proportions of the credits for increase in value of Fisher & Company stock. Any balance to be distributed as any other balances are required to be distributed. Some provision should be made in the New Delaware Corporation Charter, except it should be worded that any remaining value of the shares of stock in Fisher & Company and/or any remaining proceeds of Fisher & Company stock should be distributed to the Class B and C stock of the New Delaware Corporation in the said proportions. In present Corporation, it is provided that upon liquidation or dissolution, the Class C stock after payment in full to the holder of other classes of stock shall be entitled to the exclusion of the holders of all such other classes of stock to share ratably in all remaining assets of the corporation. The same provision should be carried over in the Articles of the New Delaware Corporation. In the amended Articles of the Old

Michigan Corporation, Class C stock should be entitled to all the remaining assets of the corporation after all payments required to be made to the Class A stock has been made.

The deficit shown by the books of the present Corporation as of June 30, 1933, for losses which have been actually sustained is \$21,041,234.12. No dividends could be paid by the present Corporation until this deficit has been wiped out. It is stated in the Agreement and Plan of Reorganization and Recapitalization that it is the intention of the parties thereto to preserve the rights,

77 powers and privileges of the classes of stock now outstanding. In order to do this provision must be made for the restoration of the said deficit as between the New Delaware Corporation and the Old Corporation before dividends may be paid on any class of stock of the New Delaware Corporation and the Old Michigan Corporation. To do this the deficit should be allocated as between the New Delaware Corporation and the Old Michigan Corporation on the same basis or percentages as hereinabove provided with reference to dividends, redemption and liquidation of the Class A stock of the New Delaware Corporation, namely .6937328% for the New Delaware Corporation and .3062672% for the Old Michigan Corporation or \$14,596,994.26 for the New Delaware Corporation and \$6,444,239.86 for the Old Michigan Corporation. The Charter of the New Delaware Corporation should provide that the earnings and profits of the Corporation shall be transferred to capital surplus until said deficit of \$14,596,994.26 has been restored and no dividends may be paid on the Class A or Class B stock until said sum has been restored to capital surplus. The amended Charter of the Old Michigan Corporation should provide that the earnings and profits of the Corporation shall be transferred to capital until said deficit of \$6,444,239.86 has been restored and no dividends may be paid on the Class A stock until said sum has been restored to capital.

Joint Exhibit A-7

CERTIFICATE OF INCORPORATION OF SENIOR CORPORATION

1. The name of the Corporation is: Senior Corporation.
2. The principal office or place of business of the Corporation in the State of Delaware is to be located at No. 100 West 10th Street, in the City of Wilmington, County of New Castle.
- 78 3. The name and address of its resident agent is The Corporation Trust Company, No. 100 West 10th Street, Wilmington, Delaware.
4. The nature of the business of the corporation and the objects and purposes to be transacted, promoted or carried on by it are as follows:

To purchase, exchange, or otherwise acquire, underwrite, hold, sell and/or sell short, exchange, pledge, hypothecate or otherwise dispose of or deal in, the stocks, bonds, notes, debentures or other evidences of indebtedness, obligations of and/or interests in any private, public, quasi-public, or municipal corporation, domestic or foreign, or of any domestic or foreign state, government or governmental authority, or of any political or administrative subdivision or department thereof, and all trust, participation or other certificates of, or receipts evidencing, interest in any such securities and obligations, and notes or other obligations of individuals, partnerships, associations and syndicates, and to pay for any such securities, evidences of indebtedness and obligations, in cash, or to issue in exchange therefor or in payment thereof its own stock, bonds, debentures or other obligations or securities or to make payment therefor by any other lawful means of payment whatever.

To do any and all acts and things for the preservation, protection, improvement and enhancement in value of any and all such securities or evidences of interest therein, and to aid by loan, subsidy, guaranty or otherwise those issuing, creating or responsible for any such securities or evidences of interest therein as aforesaid by original subscription, underwriting, loan, participation in syndicates, or otherwise, and irrespective of whether or not such securities or evidences of interest therein be fully paid or subject to further payments; and to make payment thereon as called for or in advance of calls or otherwise; and to underwrite or subscribe for the same, conditionally or otherwise, and either with a view to investment or for resale or for any other lawful purpose.

To enter into, make, perform and carry out, or cancel and rescind contracts of underwriting of the securities of any corporation, association, partnership, firm, trustee, syndicate, individual, government, state, municipality, or other political or government division or subdivision, domestic or foreign, or of any combination, organization or entity, domestic or foreign, and to act as manager of any underwriting or purchasing or selling syndicate.

To lend money on call or time and with or without collateral or other security.

To buy, exchange or otherwise acquire, own, hold, deal in, sell and otherwise dispose of goods, wares and merchandise, and personal property of every character and description and all interests of any character therein.

To buy, exchange or in any way acquire, hold, own, possess, sell and in any way dispose of real property of every kind and description and all interests of every kind in real property.

To engage in any kind of manufacturing business or process and to carry on any business or process whereby raw materials or personal property of every kind are developed, transformed or improved into finished or more finished materials, products or property; and to buy, exchange, contract for, lease, construct and otherwise acquire, take, hold and own, and to sell, mortgage, lease or otherwise dispose of, plans for such manufacturing process and/or development; and to manage, operate, maintain and improve the same.

To search for, prospect and explore for all kinds of minerals and mineral deposits, and for oil and gas; to mine, mill, drill for, convert, prepare for market and otherwise produce and deal in minerals and mineral deposits, oil and gas and the products, by-products and residual products thereof; to purchase or in any manner acquire, to own, hold and operate, and to sell, lease, encumber or in any manner dispose of, minerals, mineral lands, oil or gas lands and mineral rights, and oil, gas or mineral rights of all kinds, and to construct, or in any manner acquire, to own and hold; and to sell, encumber, or in any manner dispose of, buildings, works, workshops, laboratories, machinery, power plants, pipe lines and other property necessary or convenient to that end, but not to operate as a public utility.

80 To buy, exchange or in any way acquire, take, hold, own, operate, sell and dispose of refineries, smelters, reduction plants and any and all other plants for the extraction of minerals from ores or valuable products from subterranean or surface liquids, together with all tanks, plants, works and appurtenances necessary, proper or convenient therefor.

To buy, exchange or in any way acquire, hold, own, and operate telegraph and telephone lines, transportation lines by land or water, and pipe lines, necessary, useful or convenient in the judgment of the officers of this company for its own business; and to improve, maintain and operate the same; and to sell, mortgage, lease or otherwise dispose of the same.

To engage in a general building and construction business; to construct houses, stores, office buildings, manufacturing plants, bridges, and buildings, foundations and structures of every class and description for others and/or to so construct and erect the same on properties held, owned, or possessed by the company for sale, lease, exchange or other disposition by the company.

To do engineering for businesses and industries of every kind and nature.

To engage in research, experimental and laboratory work in all the various branches of science.

To buy, exchange or otherwise acquire, hold, own, operate, sell and otherwise dispose of water rights and water supplies together

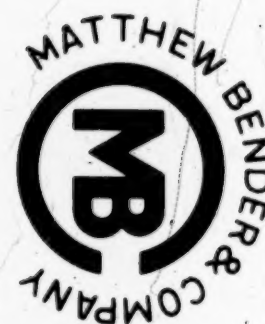
MICROCARD

TRADE MARK 

22

45

743



63



with all necessary or convenient pipe lines, reservoirs, dams, ditches and other appurtenances necessary or useful in the judgment of the officers of this company for its own business; and to manage, operate, maintain, improve, extend and develop the same.

To carry on a stock and bond brokers business in all its branches.

To transact a general real estate agency and brokerage business, including the management of estates; to act as agent, broker or attorney in fact for any persons, partnerships or corporations in buying, selling and dealing in real property and any and every estate and interest therein; to make or obtain loans upon
81 such property, and to supervise, manage and protect such property and all loans and all interests in and claims affecting the same.

To act as brokers, agents and adjusters in the business of any kind or class of insurance in any or all of its branches.

To do a general commission merchants and selling agents business; and to act as broker, agent, factor, and representative for and in every character and line of business.

To apply for, obtain, register, purchase or otherwise acquire, and to own, operate, introduce and to sell, assign or otherwise dispose of, any trade marks, trade names, patents, inventions, or any interest in the same, or any improvements, processes and discoveries used in connection with or secured under letters patent of the United States or of any sovereignty, governmental body or power whatsoever and wheresoever situate; and to use, develop, and grant licenses in respect of or otherwise employ for profit any such trade marks, patents, licenses, processes, discoveries, and the like, or any such properties or rights.

To purchase or otherwise acquire, equip, maintain and operate timber and lumber yards; to purchase, prepare for market, buy, sell, import, export, market and otherwise trade and deal in logs, timber and lumber, rough and dressed, and the products thereof.

To purchase, sell and deal in timber lands, cutover lands and real estate; to lease, purchase or otherwise acquire, to own and hold, and to sell, lease, encumber or in any manner dispose of and to deal in timber lands, timber and logging rights and logging and turpentining privileges; and to extract, distill and refine turpentine, resin and other forest products, and to sell or otherwise dispose of the same; to cut and remove timber, and to manufacture and sell wood pulp, wood solvents, wood fiber and wood products and by-products, and paper, paper boards, paper substitutes, boxes, containers, turpentine, stock-food, resin, naval stores and other articles made wholly or in part of wood or wood products; and to construct or in any manner acquire, to own and operate, and to sell, lease, encumber or otherwise dispose of, works, mills,

82 — plants, factories, warehouses, machinery, tramways, logging roads and other facilities necessary or convenient to that end.

To make contracts for and to open, keep, audit, examine or certify to the correctness of books and accounts of individuals, partnerships and corporations; and to do a general auditing and accounting business so far as may be permitted by law.

To manage, counsel in respect of and direct the affairs of any business, or commercial or manufacturing undertaking of individuals, associations or corporations, and to carry on in an advisory and consultive capacity a general business in engineering, accounting, appraisement and related branches.

To purchase, exchange or otherwise acquire, operate and manage ranches, farms and farm lands, and in connection therewith the doing of a general sheep, cattle and livestock-raising business; and to farm the said lands and to raise agricultural products thereon; and to raise and sell cattle and livestock of all kinds.

To make, enter into and carry out any arrangements which may be deemed to be for the benefit of the corporation, with any corporation, association, partnership, firm, trustee, syndicate, individual, government, state, municipality or other political or governmental division or subdivision, domestic or foreign, or of any combination, organization or entity, domestic or foreign; to obtain therefrom or otherwise to acquire by purchase, lease, assignment or otherwise, any powers, rights, privileges, immunities, franchises, guarantees, grants and concessions; to hold, own, exercise, exploit, dispose of and realize upon the same and to undertake and prosecute any business dependent thereon; and to cause to be formed, to promote, and to aid in any way in the formation of any corporation, association or organization of any kind, domestic or foreign, for any such purpose.

To organize or cause to be organized under the laws of the State of Delaware or of any other state, district, territory, nation, colony, province or government, a corporation or corporations,

83 — for the purpose of accomplishing any or all of the objects for which the corporation or corporations is or are organized; and to dissolve, wind up, liquidate, merge or consolidate any such corporation or corporations, or to cause the same to be dissolved, wound up, liquidated, merged or consolidated.

To exercise, all rights, powers and privileges whatsoever of ownership of all stocks, bonds and other evidences of indebtedness or interest owned or held by this company, including the right to vote thereon for any and all purposes.

To borrow or raise moneys for any of the purposes of the corporation and from time to time, without limit as to amount, to draw, make, accept, endorse, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or non-negotiable instruments and evidences of indebtedness, and to secure the payment thereof and of the interest thereon by mortgage on, or pledge, conveyance or assignment in trust of, the whole or any part of the assets of the corporation, real, personal or mixed, including contract rights, whether at the time owned or thereafter acquired, and to sell, pledge or otherwise dispose of such securities or other obligations of the corporation for its corporate purposes; to confer, in any manner permitted by law, upon the holders of any bonds, debentures or obligations of the corporation secured or unsecured, the right to convert the principal thereof into stock of the corporation upon such terms and conditions as may be deemed advisable.

To make any guaranty respecting stocks, dividends, securities, indebtedness, interest, contracts or other obligations, so far as the same may be permitted to be done by a corporation organized under the laws of the State of Delaware.

To cause to be formed, merged or reorganized or liquidated, and to promote, take charge of and aid in any way permitted by law, the formation, merger, liquidation or reorganization of any corporation, association or organization of any kind, domestic or foreign; and to promote, take charge of and aid in any way permitted by law, the formation, merger, reorganization or
84 liquidation of, any corporation, association or entity in the United States or abroad.

To enter into, make, perform and carry out or cancel and rescind contracts of every kind for any lawful purposes pertaining to its business with any person, entity, syndicate, partnership, association, corporation or governmental, municipal or public authority, domestic or foreign.

To have one or more offices to carry on all or any of its operations and businesses in any of the states, districts, territories or colonies of the United States and in any and all foreign states or countries; and without restriction or limit as to amount to purchase or to otherwise acquire, hold, own, mortgage, sell, convey or otherwise dispose of real and personal property of every class and description in any of the same, subject to the laws of such state, district, territory, colony or country.

In general to carry on any business not contrary to the laws of the State of Delaware, and to have and exercise all of the powers conferred by the laws of said State upon corporations formed thereunder, and to do any and all of the things hereinbefore set forth to the same extent as natural persons might or could do, and

in any part of the world as principal agent or otherwise, and either alone or in company with others.

To carry on any business, work or thing whatsoever which the corporation may deem proper or convenient in connection with any of the foregoing purposes or otherwise, or which may be calculated, directly or indirectly, to promote the interests of the corporation or to enhance the value of its property.

The foregoing clauses shall be construed both as objects and powers; and it is hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the general powers of this corporation, but are in furtherance of and in addition to, and not in limitation of, the general powers conferred by these articles and by the laws of the State of Delaware.

85 It is the intention that the purposes, objects, and powers specified in this Article 3 and all subdivisions thereof, except as otherwise expressly provided, in nowise be limited or restricted by reference to or inference from the terms of any other clause or paragraph of this Article, and that each of the purposes, objects and powers specified in this Article shall be regarded as independent purposes, objects and powers, nor shall the expression of one thing be deemed to exclude another not expressed, although it be of like nature.

The corporation shall be authorized to exercise and enjoy all other powers, rights and privileges granted by the general corporation laws of the State of Delaware by Chapter 65 of the Revised Code of Delaware of 1915 to corporations of this character, and all the powers conferred upon such corporations by the laws as enforced from time to time of the State of Delaware so far as not in conflict herewith or which may be conferred by all Acts heretofore or hereafter amendatory of or supplemental to said general corporation laws or said laws, and the enumeration of certain powers as herein specified is not intended as exclusive of or as a waiver of any of the powers, rights or privileges granted or conferred by said general corporation law or said laws now or hereafter in force. Provided, However, that the corporation shall not in any State, District, Territory, Possession or Country carry on any business which a corporation organized under the laws of said State, District, Territory, Possession or Country could not carry on.

4. The total number of shares of all classes of stock which the Corporation shall have authority to issue is three hundred thousand (300,000), of which one hundred thousand (100,000) shares shall be Class A stock of the par value of Ten Dollars (\$10.00) per share, one hundred thousand (100,000) shares shall be Class B stock of the par value of Ten Dollars (\$10.00) per share, and

one hundred thousand, (100,000) shares shall be Class C stock, without par value.

The minimum amount of capital with which the Corporation will commence business is One Thousand Dollars (\$1,000.00).

86 The statement of all the designations, powers, preferences, rights, qualifications, limitations or restrictions thereof in respect of the several classes of stock of the Corporation is as follows:

(a) The earnings and profits of the Corporation to the extent of \$14,596,994.26 shall, from time to time, be transferred to capital or capital surplus or surplus and anything herein contained or otherwise to the contrary notwithstanding, no dividends, whether cumulated or current shall be paid or set aside on any shares of stock of the Corporation until earnings and profits of the Corporation in the total sum of \$14,596,994.26 have been so transferred to capital or capital surplus, or surplus, and if transferred to capital surplus or surplus no dividends on any class of stock shall be paid out of any such capital surplus or surplus, nor shall any dividends be paid from any surplus representing the excess of the value of the assets and property received by this Corporation in exchange for the shares of stock issued by this Corporation pursuant to the plan of Reorganization and Recapitalization under which this Corporation was organized, over the amount declared by the Board of Directors to be capital.

(b) The shares of Class A stock shall be entitled to receive, except as herein otherwise provided, when and as declared by the Board of Directors out of the surplus or not profits of the Corporation arising from the assets and property of the Corporation other than from the shares of stock of Fisher & Company held by the Corporation, cumulative dividends at the rate of Sixteen and 65/100ths Dollars (\$16.65) per share per annum, and no more, payable at least semi-annually on the 1st days of March and September of each year, and at such other times as the Board of Directors may from time to time determine. Such dividends may, in the discretion of the Board of Directors, be paid either in cash or—in whole or in part—in stocks or other securities, other than Fisher & Company stock at any time held by this Corporation, at the market value of such stock or securities at the time of such distribution.

87 (c) In the event of any liquidation or dissolution or winding up—whether voluntary or otherwise—of the corporation, the Class A stock shall be entitled to receive in full out of the assets—whether capital or surplus—payable either in assets of the corporation other than cash or in cash or partly in cash and partly in such assets, the sum of Four Hundred Sixteen and 24/100ths Dollars (\$416.24) per share, plus an amount equal

to Sixteen and 65/100ths Dollars (\$16.65) per share per annum for the period from July 29, 1929, to August 31, 1933, representing the proportionate share of the cumulated and unpaid dividends on the Class A stock of Senior Investment Corporation, a Michigan corporation, in the reorganization of which this Corporation was organized, and plus an amount equal to all accrued but unpaid dividends thereon after August 31, 1933, before any payment shall be made to or on any of the remaining classes of stock of this Corporation, except as provided in paragraph (c) of this Article 4.

(d) Class A stock may be redeemed, in whole or in part, at any time or from time to time, at the option of the Board of Directors, at such price per share as may be agreed between the shareholder whose shares are to be redeemed and the Company; provided, however, that such agreed price shall in no event exceed Four Hundred Sixteen and 24/100ths Dollars (\$416.24) per share and that such redemption and the price agreed to be paid shall in each instance be approved in writing by the holders of not less than eighty per cent (80%) of the Class A shares then outstanding; and there shall be added to such agreed redemption price the amount of all accrued and unpaid dividends as specified in the preceding paragraph on the shares to be redeemed. The agreement and approval for such optional redemption price may provide that such optional redemption price may be paid in assets of the Corporation (other than Fisher & Company stock) other than cash or in cash or partly in such assets and partly in cash. If less than all of the outstanding Class A stock is to be redeemed, the stock to be redeemed shall be selected in such manner as the

Board of Directors may determine. In the event it shall be determined to pay for the redemption of any or all of the shares of the Class A stock at any time outstanding either entirely or partially in such assets of the Corporation other than cash, the assets so to be utilized and the credit to be received therefor on the redemption price shall be fixed by agreement between the company and the shareholder whose Class A shares are to be redeemed, subject at all times, however, to the approval in writing of the holders of not less than eighty per cent (80%) of the Class A shares then outstanding. Notice of the intention to redeem shall be given by mailing notice thereof, specifying the date and place of redemption—and if less than all, the certificates to be redeemed—to each holder of record of shares to be redeemed at the last address of such holder appearing on the stock registry of this corporation.

(e) The shares of Class B stock of this corporation shall be entitled to receive each year in dividends the total net income—as hereinafter defined—received by this Corporation from the stock of Fisher & Company, a Michigan corporation, at any time

held by this corporation, up to Twenty-four Dollars (\$24.00) per share per annum. If said net income from said Fisher & Company stock shall in any year exceed Twenty-four Dollars (\$24.00) per share per annum on the outstanding Class B stock and the amount of said Twenty-four Dollars (\$24.00) per share per annum shall have been declared and paid or set aside for all outstanding Class B shares, a dividend up to One Dollar (\$1.00) per share shall be paid therefrom to the Class C stock; any remaining net income from Fisher & Company stock shall be distributed equally, share for share, between Class B and Class C stock. Out of the capital surplus or surplus of this Corporation the sum of \$1,675,000 in cash and/or in property shall be allocated to the Fisher & Company stock at any time held by this Corporation, said sum representing the proceeds received from the redemption of a portion of the shares of Fisher & Company stock held by Senior Investment Corporation, a Michigan corporation, in the reorganization of which this Corporation was organized. Whenever the words "Fisher & Company stock" or the words "shares of

89 stock of Fisher & Company" or any words of similar import are used herein, such words shall mean and include the shares of stock of Fisher & Company at any time held by the Corporation plus the said sum of \$1,675,000 allocated to the Fisher & Company stock, plus the moneys and/or property, if any, received in exchange for or by virtue of any of the shares of Fisher & Company stock any time held by the Corporation. To determine the net income arising from said Fisher & Company stock, there shall be deducted from the gross amount of all dividends and income from Fisher & Company stock the amount of all taxes (including franchise or excise taxes) required to be paid by this Corporation on said Fisher & Company stock and on or in respect of the aliquot portion of the assets of this corporation represented by said stock, and all taxes on the income therefrom, plus the cost and expense of handling and managing said stock by this Corporation as determined by the Board of Directors of this corporation. If the net profits or surplus of this Corporation be not sufficient to pay the dividends provided in this paragraph (e), the dividends herein provided for shall be paid only to an amount equal to the existing surplus or net profits of this Corporation; any increase in value of Fisher & Company stock shall not be considered or included in determining the existing surplus or net profits of this Corporation for this purpose. Any surplus representing the excess of the value of the assets and property received by this Corporation in exchange for the shares of stock issued by this Corporation pursuant to the plan of Reorganization and Recapitalization, under which this Corporation was organized, over the amount declared by the Board of Directors to be

capital and any surplus or capital surplus created by the transfers made to surplus or capital surplus pursuant to the provisions of Paragraph (a) of this Article 4 shall not be considered or included in determining the existing surplus or net profits of this Corporation for this purpose.

(f) If and when the shares of Fisher & Company stock, held by this corporation, shall, as shown by the books of said
90 Fisher & Company, have a value of \$38,325,000, then and thereafter, in addition to the dividends so to be paid on the Class B and Class C shares any increase in any year in the value of the shares of Fisher & Company stock then held by this Corporation as such increase shall be shown by the books of said Fisher & Company at the end of the fiscal year of said Fisher & Company ending in such year of this Corporation shall accrue in each year to said Class B and Class C stock of this Corporation in the proportions and in the amounts which the same would have accrued and been distributed to said Class B and Class C stock of this Corporation if the amount of said increase in such year had been received in cash by this Corporation as dividends on said shares of said Fisher & Company stock in addition to the amount of dividends on said Fisher & Company stock actually received by this Corporation in cash in such year and the next to the last sentence of paragraph (e) of this Article 4 were not operative beyond the amount of the dividends in fact received in cash from Fisher & Company. An account shall be kept on the books of this Corporation which shall take up all increases in value of Fisher & Company stock held by this Corporation as often as each such increase is shown by the books of said Fisher & Company as aforesaid. Said account shall at all times show the amount of such increase accrued to each of the classes of Class B and Class C stock and to each share of each of said classes then outstanding. If in any year there shall be a decrease in the value of the shares of Fisher & Company as shown on the books of Fisher & Company at the end of the fiscal year of Fisher & Company ending in such year of this Corporation, such decrease shall be taken up in said account on the books of this Corporation and the amount of such decrease deducted from the total net credit of the accruals of increases of Fisher & Company stock to that time shown in said account to the credit of the Class B and Class C stock respectively which deduction shall be made from each of said Class B and Class C in the proportion of the number of shares of each of said classes then outstanding, the shares of each
91 class to be considered and treated as a unit for this purpose. The credits accrued pursuant to the foregoing provisions of this paragraph (f) shall not be required to be distributed in

dividends but shall be required to be distributed only pursuant to paragraph (g) of this Article 4.

(g) On any liquidation, dissolution, or winding up of the affairs of this Corporation—whether voluntary or involuntary—the class B stock shall be entitled to receive out of said Fisher & Company stock then held by this Corporation Four Hundred Dollars (\$400.00) per share of said Class B stock plus the amount of any net income from said Fisher & Company stock, as net income is defined in paragraph (e) of this Article 4, which would have been distributable to said Class B stock if there had been no liquidation, dissolution, or winding up. Such Payment may be made either in cash or in shares of Fisher & Company stock or partly in cash and partly in such shares, said Fisher & Company stock for such purpose to be taken at the book value thereof as then shown on the books of Fisher & Company. The right of the Class B stock to so receive said Four Hundred Dollars (\$400.00) and undistributed net income in the foregoing portion of this paragraph (g) described shall be free from and superior to the rights and claims of the holders of all other classes of stock of this Corporation. Any then remaining value of the shares of stock in Fisher & Company held by this Corporation shall be distributed to the Class B and Class C stock in the proportions and up to the amounts which the net increase in value of said Fisher & Company stock shall to that time have accrued to said Class B and Class C stock then outstanding under the provision of paragraph (f) of this Article 4, and any balance over the sum of the amounts so accrued shall be distributed as assets other than Fisher & Company stock are by this Certificate of Incorporation provided to be distributed.

Any net income as defined in paragraph (e) of this Article 4 which would have been distributable to the Class C stock if there had been no liquidation, dissolution, or winding up shall
92 be distributed to said Class C stock on said liquidation, dissolution, or winding up.

(h) Class B stock may be redeemed in whole or in part at any time or from time to time at the option of the Board of Directors at such price per share as may be agreed between the shareholder whose shares are to be redeemed and the company; provided, however, that such agreed price shall in no event exceed the amount which such shares would have been entitled to receive in distribution as aforesaid if this Corporation were to be liquidated, dissolved, or wound up at the time of such redemption, and that such redemption and the price agreed to be paid therefor shall in each instance be approved in writing by the holders of not less than eighty percent (80%) of the Class B shares then outstanding; and there shall be added to such agreed redemption price the amount of all unpaid dividends as hereinbefore specified on the shares to

be redeemed. The agreement and approval for such optional redemption price may provide that such optional redemption price may be paid in cash or in assets of the Corporation (including stock of Fisher & Company then held by the Corporation) other than cash or partly in such assets and partly in cash. If less than all of the outstanding Class B stock is to be redeemed, the stock to be redeemed shall be selected in such manner as the Board of Directors may determine. In the event it should be determined to pay for the redemption of any or all of the shares of the Class B stock at any time outstanding either entirely or partially in such assets of the Corporation other than cash, the assets so to be utilized and the credit to be received therefor on the redemption price shall be fixed by agreement between the company and the shareholders whose Class B shares are to be redeemed, subject at all times, however, to the approval in writing of the holders of not less than eighty percent (80%) of the Class B shares then outstanding. Notice of the intention to redeem shall be given by mailing notice thereof, specifying the date and place of redemption—and if less than all, the certificates to be redeemed—to each holder of record of shares to be redeemed at the last address of such holder appearing on the stock registry of this Corporation.

93 (i) On any redemption of any of the Class A or Class B stock of this Corporation, the Corporation may deposit the aggregate redemption price or the assets of this Corporation other than cash to be utilized in such redemption, with any bank or trust company, either in the City of Detroit or City of New York, named in such notice, payable or deliverable as aforesaid to the respective record holders of the shares to be redeemed, on endorsement and surrender of their certificates in this Corporation; and thereupon said holders shall cease to be stockholders with respect to such shares, and from and after the making of such deposit said holders shall have no interest in or claim against the Corporation with respect to such shares but shall be entitled only to receive said moneys or assets other than cash from said bank or trust company without interest. Any moneys or assets other than cash unclaimed at the end of six years from the date of the said deposit shall be paid or redelivered to the Corporation. No stock so redeemed shall ever be reissued by the Corporation.

(j) In addition to any dividends payable on the Class C stock out of the income of Fisher & Company stock as hereinbefore provided, dividends may be declared upon the Class C stock of this Corporation out of any surplus or net profits of the corporation—except such as may arise out of or result from any income of the stock of Fisher & Company held by this Corporation as provided in Paragraph (e) of this Article 4—remaining after full cumula-

tive dividends on the Class A stock for all previous dividend periods shall have been paid and for the current semi-annual period shall have been declared and paid or set aside.

(k) If and after the Class B stock hereunder shall have been redeemed, the amount of the net income from said Fisher & Company stock, as hereinbefore defined, shall be available for the payment of dividends on said Class C stock if, when, and as declared by the Board of Directors, but not to an amount which shall exceed the net profits or surplus of this Corporation.

(l) In the event of any liquidation, dissolution or winding up of the Corporation, the Class C stock, after payment in full to the holders of the other classes of stock on such liquidation, dissolution or winding up, as hereinbefore provided, shall be entitled, to the exclusion of the holders of all other classes of stock hereunder, to share ratably in all remaining assets of the Corporation.

(m) Except as otherwise expressly provided by the laws of the State of Delaware Class A and Class B stock shall have no voting power nor shall the holders thereof as such be entitled to notice of stockholders' meetings, all rights to vote and all voting power being hereby vested exclusively in the holders of Class C stock.

5. Special statements pertaining to the primary organization of this Corporation and not included in the foregoing requirements:

(a) None of the stock of Fisher & Company of any kind or class at any time held by this Corporation shall be sold, mortgaged or pledged, or contract for any of the same be made, or any interest in any of the same be created in any person, firm or corporation without the consent in writing of at least two-thirds of the outstanding Class B stock of this Corporation.

(b) Except as hereinafter provided in this paragraph, no holder of any stock of this corporation shall be entitled as of right to purchase or subscribe for any part of any unissued stock of this corporation, or any new or additional stock of any class to be issued by reason of any increase in the authorized capital stock of this corporation, or of any issue of securities of the corporation convertible into stock, whether such stock or securities be issued for money or for a consideration other than money. When any such unissued stock or any such additional authorized issue of new stock or such securities convertible into stock are to be issued and disposed of, it may be issued and disposed of by the Board of Directors to such persons, firms, corporations or associations and upon such terms as the Board of Directors may in their discretion determine without offering to the stockholders then of record or any class of stockholders any thereof on the same terms or any terms; provided, however, that no Class C stock shall be issued or sold except after having first been offered for subscription to the

holders of the then outstanding Class C stock according to their respective shares.

(c) In the absence of fraud no contract or other transaction with any other corporation or any individual, association, or firm, shall be in any way affected or invalidated by the fact that any of the directors of the corporation are interested in such other corporation, association or firm, or personally interested in such contract or transaction, nor shall any director so interested be liable to account to the corporation for any profit made by him from or through any such contract or arrangement so adopted by the Board of Directors or which may be ratified and approved by the holders of the Class C stock, by reason of such director holding such office or the fiduciary relationship thereby established. Any director of this corporation may vote upon any contract or other transactions between this corporation and any subsidiary or affiliated corporation without regard to the fact that he is also a director of such subsidiary or affiliated corporation.

(d) Any contract, transaction or act of the corporation or of the Board of Directors, which shall be ratified by a majority of a quorum of the voting stock at any annual meeting or at any special meeting called for such purpose shall be as valid and binding as though ratified by every stockholder of the corporation; provided, however, that any failure of the voting stockholders to approve or ratify such contract, transaction or act, when and if submitted, shall not be deemed in any way to render the same invalid nor to deprive the directors or officers of their right to proceed with such contract, transaction, or act.

(e) The Directors may from any funds available after all dividend payments on the Class A and Class B stocks have been made or set aside for the current semi-annual period, devote so much of the remaining available funds of the company—other than any net income arising from Fisher & Company stock held by this corporation—to one or more religious, charitable, scientific, literary, or educational purposes, and to this end may make payment of all or any part of such funds to such corporation, trust, community chest, fund, foundation, post, or organization of war veterans, institution, church, school, association, or person, or any number of the foregoing, as in the sole discretion of the Board of Directors is best qualified to carry out the purposes at the time sought to be fulfilled or accomplished. The matters stated in this paragraph (e) of Article 5 shall be construed as objects, and purposes of this corporation as well as stating the powers of the Board of Directors with respect to such objects and purposes.

(f) Authority is hereby specifically conferred upon the Board of Directors of the corporation at any time and from time to time, to mortgage, pledge, or hypothecate the property of the cor-

poration, in whole or in part—subject to the limitations respecting Fisher & Company stock, set forth in paragraph (a) of Article 5 hereof—for the purpose of securing any obligation of the corporation that may from time to time be created and incurred.

6. The names and places of residence of each of the incorporators are as follows:

<i>Names</i>	<i>Places of residence</i>
C. S. Peabbles	Wilmington, Delaware.
Alfred Jervis	Wilmington, Delaware.
Walter Renz	Wilmington, Delaware.

97 7. The corporation is to have perpetual existence.

8. The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever.

9. All corporate powers of the Corporation shall be exercised by the Board of Directors except as otherwise provided by law. The Board of Directors may, by resolution or resolutions, passed by a majority of the whole Board, designate one or more committees, each committee to consist of two or more of the directors of the Corporation, which, to the extent provided in said resolution or resolutions or in the by-laws of the Corporation, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Corporation, and may have power to authorize the seal of the Corporation to be affixed to all papers which may require it.

The number of directors which shall constitute the whole Board shall be fixed from time to time by the by-laws and may be altered from time to time by amendment of the by-laws, but in no case shall the number be less than three. In case of any increase in the number of directors, the additional directors shall be elected as provided in the by-laws.

The directors may hold their meetings and have an office or offices outside the State of Delaware if the by-laws so provide.

Directors need not be stockholders of the Corporation or residents of the State of Delaware.

Subject to the power of the stockholders of the Corporation to make, alter, or repeal by-laws, there is hereby conferred upon the Board of Directors the power to make, alter, amend, and repeal by-laws of the Corporation.

The Board of Directors may from time to time establish, re-establish, amend, alter or repeal and may put into effect and carry out such a plan or plans as may from time to time be approved by it for the distribution among or sale to the officers and employees of the Corporation, or any of them, in addition to their regular salaries or wages, of any moneys or other property of the Corporation, or of any shares of stock of the Corporation, of any class, in consideration for or in recognition of the services rendered by such officers and employees.

The Board of Directors may, by the affirmative vote of two-thirds of the members of the whole Board, remove at any time any officer elected or appointed by the Board of Directors, and may remove any other officer or employee of the Corporation or confer such power on any committee or officer. Any removal may be for cause or without cause.

The Board of Directors from time to time shall determine whether and to what extent and at what times and places and under what conditions and regulations the accounts and books of the Corporation, or any of them, shall be open to the inspection of the stockholders, and no stockholder shall have any right to inspect any account, book, or document of the Corporation except as conferred by the laws of the State of Delaware or as authorized by resolution of the Board of Directors or the stockholders.

10. The stockholders may hold their meetings, annual or special, within or without the State of Delaware as may be provided in the by-laws. The Corporation may have one or more offices and keep any of the books of the Corporation, subject to the provisions of the laws of the State of Delaware, within or without the State of Delaware at such place or places as may from time to time be designated by the Board of Directors.

11. The Corporation reserves the right to amend, alter, change, or repeal any provision contained in this certificate in the manner now or hereafter prescribed by statute and all rights conferred upon the stockholders herein are granted subject to this reservation.

We, the undersigned, being each of the incorporators hereinbefore named for the purpose of forming a corporation to do business both within and without the State of Delaware, and in pursuance of the General Corporation Law of the State of Delaware, being Chapter 65 of the Revised Code of Delaware, and the acts amendatory thereof and supplemental thereto, do make this certificate, hereby declaring and certifying that the facts herein stated are true, and accordingly have hereunto set our hands and seals this 26th day of August, A. D. 1933.

[L. S.]

[L. S.]

[L. S.]

C. S. PEABLES,
ALFRED J. JERVIS,
WALTER LENZ.

In the Presence of:

HAROLD E. GRANTLAND

STATE OF DELAWARE,

County of New Castle, ss:

Be it remembered, that on this 26th day of August, A. D. 1933, personally came before me, Harold E. Grantland, a Notary Public

for the State of Delaware, C. S. Peabbles, Alfred Jervis and Walter Lenz, all of the parties to the foregoing certificate of incorporation, known to me personally to be such, and severally acknowledged the said certificate to be the act and deed of the signers respectively and that the facts therein stated are truly set forth.

Given under my hand and seal of office the day and year aforesaid.

[SEAL]

HAROLD E. GRANTLAND, *Notary Public*.

Harold E. Grantland, Notary Public. Appointed Jan. 11, 1933, State of Delaware. Term Two Years.

STATE OF DELAWARE

OFFICE OF SECRETARY OF STATE

I, Charles H. Grantland, Secretary of the State of Delaware, do hereby certify that the above and foregoing is a true and correct copy of Certificate of Incorporation of the "Senior Corporation", as received and filed in this office the twenty-sixth day of August, A. D. 1933, at 9 o'clock A. M.

In testimony whereof, I have hereunto set my hand and official seal, at Dover, this twenty-sixth day of August in the year of our Lord one thousand nine hundred and thirty-three.

[SEAL]

CHARLES H. GRANTLAND,
Secretary of State.

Joint Exhibit A-8

UNITED STATES OF AMERICA

(State Seal)

THE STATE OF MICHIGAN

MICHIGAN CORPORATION AND SECURITIES COMMISSION

To all to whom these presents shall come:

I, Howard M. Warner, Commissioner of the Michigan Corporation and Securities Commission, Do Hereby Certify That the Annexed Copy of amendment to the articles of incorporation of the Senior Investment Corporation, filed in this office under date of August 29, 1933, has been compared by me with the record on file in this Department and that the same is a true copy thereof, and the whole of such record.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the Commission, in the City of Lansing, this 10th day of September, A. D. 1941.

[SEAL.]

HOWARD M. WARNER,
Commissioner.

101 CERTIFICATE OF AMENDMENT TO THE ARTICLES OF
INCORPORATION

Decreasing capital stock and otherwise amending articles of Incorporation of the Senior Investment Corporation, P. O. Address 2402 Fisher Building, Detroit, Michigan

We, the undersigned, being the President and Secretary of the Senior Investment Corporation, a corporation existing under the provisions of Act No. 327 of the Public Acts of Michigan of 1931, do hereby certify as required by said Act:

That at a meeting of the Stockholders of said Corporation duly called for the express purpose of reducing the capital stock and otherwise amending the Articles of Incorporation thereof, as heretofore amended, in the particulars hereinafter set forth and duly held on the 28th day of August, A. D. 1933, the following resolutions and amendments were approved and adopted by the affirmative vote of the holders of all of the shares entitled to vote and by the affirmative vote of the holders of all of the shares of each class of stock whose rights, privileges, and preferences are changed thereby, to wit:

Resolved, that the capital stock of this Corporation be decreased from 300,000 shares without any par or nominal value, consisting of the following classes of stock without par value: Class A, 100,000 shares; Class B, 100,000 shares; Class C, 100,000 shares; to 100,000 shares of the par value of \$5.00 per share to be designated as Class A stock, and 100,000 shares of the par value of \$1.00 per share to be designated as Class C stock.

And be it further resolved, that in order to carry out the foregoing resolution the Articles of Incorporation as heretofore amended be further amended by striking out Article V and IX thereof and inserting in lieu thereof Articles V and IX which shall read as follows:

102

ARTICLE V

(1) The total capital stock authorized is two hundred thousand (200,000) shares, consisting of the following classes of stock:

Class A stock—one hundred thousand (100,000) shares, par value Five Dollars (\$5.00) per share.

Class C stock—one hundred thousand (100,000) shares, par value One Dollar (\$1.00) per share.

(2) The holders of Class A stock shall not be entitled to vote for Directors nor upon any other matter, except as provided by law, but the sole and exclusive voting power, except as provided by law, shall belong to and be vested in the holders of Class C stock.

(3) *Transfers to capital.*—The earnings and profits of the corporation to the extent of \$6,444,239.96 shall from time to time be transferred to capital or capital surplus or surplus, and anything herein contained or otherwise to the contrary notwithstanding, no dividends, whether cumulated or current, shall be paid or set aside on any shares of stock of the corporation until earnings and profits of the corporation in the sum of \$6,444,239.96 have been so transferred to capital or capital surplus or surplus.

(4) *Class A stock.*—The shares of Class A stock shall be entitled to receive, except as herein otherwise provided, when and as declared by the Board of Directors, out of the surplus or net profits of the Corporation, cumulative dividends at the rate of Seven and 35/100th Dollars (\$7.35) per share per annum, and no more, payable at least semi-annually on the 1st days of March and September of each year, and at such other times as the Board of Directors may from time to time determine. Such dividends may, in the discretion of the Board of Directors, be paid either in cash or—in whole or in part—in stocks or other securities, at the market value of such stock or securities at the time of such distribution.

103 In the event of any liquidation or dissolution or winding up—whether voluntary or otherwise—of the corporation, the Class A stock shall be entitled to receive in full out of the assets—whether capital or surplus—payable either in assets of the corporation other than cash or in cash or partly in cash and partly in such assets, the sum of One Hundred Eighty-three and 76/100ths Dollars (\$183.76) per share, plus an amount equal to Seven and 35/100ths Dollars (\$7.35) per share per annum for the period from July 29, 1929, to August 31, 1933, and plus an amount equal to all accrued but unpaid dividends thereon after August 31, 1933, before any payment shall be made to or on any of the shares of stock of this Corporation.

Class A stock may be redeemed, in whole or in part, at any time or from time to time, at the option of the Board of Directors, at such price per share as may be agreed between the shareholder whose shares are to be redeemed and the Company; provided, however, that such agreed price shall in no event exceed One Hundred Eighty-three and 76/100ths Dollars (\$183.76) per share and that such redemption and the price agreed to be paid shall in each instance be approved in writing by the holders of not less than

eighty percent (80%) of the Class A shares then outstanding; and there shall be added to such agreed redemption price the unpaid portion of the following amounts on the shares to be redeemed:

(a) \$7.35 per share per annum for the period from July 29, 1929, to August 31, 1933; and

(b) An amount equal to all accrued and unpaid dividends thereon after August 31, 1933.

The agreement and approval for such optional redemption price may provide that such optional redemption price may be paid in assets of the Corporation other than cash or in cash or partly in such assets and partly in cash. If less than all of the outstanding Class A stock is to be redeemed, the stock to be redeemed shall be selected in such manner as the Board of Directors may determine. In the event it shall be determined to pay for the redemption of any or all of the shares of the Class A stock

104 at any time outstanding either entirely or partially in such assets of the Corporation other than cash, the assets so to be utilized and the credit to be received therefor on the redemption price shall be fixed by agreement between the company and the shareholder whose Class A shares are to be redeemed, subject at all times, however, to the approval in writing of the holders of not less than eighty percent (80%) of the Class A shares then outstanding. Notice of the intention to redeem shall be given by mailing notice thereof, specifying the date and place of redemption—and if less than all, the certificates to be redeemed—to each holder of record of shares to be redeemed at the last address of such holder appearing on the stock registry of this corporation.

On any redemption of any of the Class A stock of this Corporation the Corporation may deposit the aggregate redemption price and/or the assets of this Corporation other than cash to be utilized in such redemption, with any bank or trust company, either in the City of Detroit or City of New York, named in such notice, payable or deliverable as aforesaid to the respective record holders of the shares to be redeemed, on endorsement and surrender of their certificates in this Corporation; and thereupon said holders shall cease to be stockholders with respect to such shares, and from and after the making of such deposit said holders shall have no interest in or claim against the Corporation with respect to such shares but shall be entitled only to receive said moneys or assets other than cash from said bank or trust company without interest. Any moneys or assets other than cash unclaimed at the end of six years from the date of the said deposit shall be paid or redelivered to the Corporation. No stock so redeemed shall ever be reissued by the corporation.

(5) *Class C stock.*—Subject to the foregoing provisions of this Article V hereof and after an amount equal to the cumulated and unpaid dividends on said Class A stock for the period from July 29, 1929, to August 31, 1933, at the rate of Seven and 105 35/100ths Dollars (\$7.35) per share per annum and plus an amount equal to all cumulated and unpaid dividends on said Class A stock for the period from and after August 31, 1933, and the dividends for the current semiannual period shall have been declared and paid, the Board of Directors may at any time and from time to time declare dividends upon the Class C stock of the Corporation.

In the event of liquidation, dissolution or winding up of the Corporation, the Class C stock after payment in full to the holders of the Class A stock of the amounts herein required to be paid to them, shall be exclusively entitled to share ratably in all the remaining assets and property of the Corporation.

(6) The total amount of stock outstanding is 171,573 shares, consisting of 71,573 shares of Class A stock of the par value of Five Dollars (\$5.00) per share, and 100,000 shares of Class C stock of the par value of One Dollar (\$1.00) per share. The 100,000 shares of Class B stock authorized by the original articles of association and issued pursuant thereto have been surrendered to the corporation by the holders thereof for cancellation.

(7) The capital of the corporation shall consist of an amount equal to the aggregate par value of all the shares thereof having par value, and the excess, if any, at any given time of the total net assets of the corporation over the amounts so determined to be capital shall be surplus, all or any part of which surplus the Board of Directors (subject to the limitations contained in the Articles of Incorporation as amended) in its discretion may apply to the reduction of the book value of the fixed assets or the good will or other capital assets of the corporation, or on account of capital losses, or use as otherwise permitted by law.

ARTICLE IX

Special statements pertaining to the primary organization of this corporation and not included in the foregoing requirements:

(a) Except as hereinafter provided in this paragraph, no holder of any stock of this corporation shall be entitled 106 as of right to purchase or subscribe for any part of any unissued stock of this corporation, or any new or additional stock of any class to be issued by reason of any increase in the authorized capital stock of this corporation, or of any issue of securities of the corporation convertible into stock, whether such stock or securities be issued for money or for a consideration other

than money. When any such unissued stock or any such additional authorized issue of new stock or such securities convertible into stock are to be issued and disposed of, it may be issued and disposed of by the Board of Directors to such persons, firms, corporations or associations and upon such terms as the Board of Directors may in their discretion determine without offering to the stockholders then of record of any class of stockholders any thereof on the same terms or any terms; provided, however, that no Class C stock shall be issued or sold except after having first been offered for subscription to the holders of the then outstanding Class C stock according to their respective shares.

(b) In the absence of fraud no contract or other transaction, with any other corporation or any individual, association or firm, shall be in any way affected or invalidated by the fact that any of the directors of the corporation are interested in such other corporation, association or firm, or personally interested in such contract or transaction, nor shall any director so interested be liable to account to the corporation for any profit made by him from or through any such contract or arrangement so adopted by the Board of Directors or which may be ratified and approved by the holders of the Class C stock, by reason of such director holding such office or the fiduciary relationship thereby established. Any director of this corporation may vote upon any contract or other transaction between this corporation and any subsidiary or affiliated corporation without regard to the fact that he is also a director of such subsidiary or affiliated corporation.

(c) Any contract, transaction or act of the corporation or of the Board of Directors, which shall be ratified by a majority of a quorum of the voting stock at any annual meeting or at any special meeting called for such purpose shall be as valid and binding as though ratified by every stockholder of the corporation; provided, however, that any failure of the voting stockholders to approve or ratify such contract, transaction or act, when and if submitted, shall not be deemed in any way to render the same invalid nor to deprive the directors or officers of their right to proceed with such contract, transaction or act.

(d) The Board of Directors may from any funds available, after all dividend payments on the Class-A stock have been made or set aside for the current semiannual period, devote so much of the remaining available funds of the corporation to one or more religious, charitable, scientific, literary, or educational purposes, and to the end may make payment of all or any part of such funds to such Corporation, trust, community chest, fund, foundation, post or organization of war veterans, institutions, church, school association, or person, or any member of the foregoing as in the

sole discretion of the Board of Directors is best qualified to carry out the purposes at the time sought to be fulfilled or accomplished. The matters stated in this paragraph (d) of Article IX shall be construed as objects and purposes of this Corporation, as well as stating the powers of the Board of Directors with respect to such objects and purposes.

(e) Authority is hereby specifically conferred upon the Board of Directors of the Corporation at any time and from time to time, to mortgage, pledge or hypothecate the property of the Corporation, in whole or in part, for the purpose of securing any obligation of the Corporation that may from time to time be created or incurred.

In witness whereof, said Corporation, by its President and Secretary, has hereunto signed its name this 28th day of August, 1933.

SENIOR INVESTMENT CORPORATION,
By FRED J. FISHER,

Its President.

By HORACE S. MAYNARD,

Its Secretary.

108 STATE OF MICHIGAN,
County of Wayne, ss:

On this 28th day of August, 1933, before me, a Notary Public in and for said County, appeared Fred J. Fisher, President of the Senior Investment Corporation, known to me to be the person named in, and who executed the foregoing instrument, and acknowledged that he executed the same freely and for the intents and purposes therein mentioned.

[SEAL]

JOHN C. MOONS, *Notary Public,*
Wayne County, Michigan.

My commission expires November 14, 1936.

Joint Exhibit A-9

SENIOR INVESTMENT CORPORATION

WAIVER OF NOTICE OF SPECIAL MEETING OF THE BOARD OF DIRECTORS

We, the undersigned, constituting all of the Board of Directors of Senior Investment Corporation, a Michigan corporation, do hereby severally waive any and all notice of a special meeting of the directors of said corporation, and we do hereby consent and agree that a special meeting of the board of directors of said corporation may and shall be held at the office of the Company. 2400

Fisher Building, in the City of Detroit, Michigan, on the 24th day of August, A. D. 1933, at two o'clock in the afternoon.

Dated August 24, 1933.

F. J. FISHER,
ROBERT C. SHIELDS,
HORACE S. MAYNARD,
ANDREW E. BALDWIN,
LEO BUTZEL.

109

SENIOR INVESTMENT CORPORATION

MINUTES OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS

A Special Meeting of the Board of Directors of Senior Investment Corporation was held at the office of the Company, 2400 Fisher Building, in the City of Detroit, Michigan, on August 24, 1933, at two o'clock in the afternoon, pursuant to a written waiver of notice of such meeting signed by all of the Directors fixing the time and place of said meeting.

The following Directors were present in person:

Fred J. Fisher.

Robert C. Shields.

Horace S. Maynard.

Andrew E. Baldwin.

Mr. Fred J. Fisher, the President, presided and Mr. Horace S. Maynard acted as Secretary of the meeting.

The President stated that the officers of the corporation deemed it for the best interests of this corporation and its stockholders, that this corporation be reorganized and recapitalized. That subject to the approval of the Board of Directors and stockholders of this corporation, the President and Secretary, in the name and on behalf of the corporation, had executed an agreement and plan of reorganization and recapitalization of Senior Investment Corporation, the other parties to said agreement and plan being Senior Corporation, therein described as a corporation to be organized under the laws of the State of Delaware, and Fred J. Fisher, Burtha M. Fisher, and Andrew E. Baldwin, being the owners of all of the outstanding capital stock of this corporation. The President thereupon presented and read to the meeting a copy of the agreement and plan of reorganization and recapitalization of Senior Investment Corporation as executed. Thereupon and pursuant to a motion duly made and seconded and by the affirmative vote of all of the directors present at the meeting carried, the copy of said agreement and plan as presented and read was ordered to be initiated by the Secretary and to be inserted

in the minute book of the corporation immediately following the minutes of this meeting.

Thereupon on motion duly made and seconded and by the affirmative vote of all the directors present, the following resolutions were adopted:

Resolved, that the agreement and plan of reorganization and recapitalization of Senior Investment Corporation as presented to this meeting be and the same is hereby ratified and adopted.

Further resolved, that the action of the President and Secretary of this corporation in executing the said agreement and plan of reorganization and recapitalization in the name and on behalf of this corporation be and the same is hereby ratified, approved and confirmed, and that this corporation be, and does hereby become, a party to said agreement and plan of reorganization and recapitalization.

Further resolved, that the proper officers of this corporation be and they hereby are authorized and directed to cause a corporation to be organized under the name of Senior Corporation, under the laws of the State of Delaware, with an authorized capital stock of ~~Three Hundred Thousand (300,000)~~ shares, consisting of ~~One Hundred Thousand (100,000)~~ shares of Class A stock of the par value of Ten Dollars (\$10.00) per share, ~~One Hundred Thousand (100,000)~~ shares of Class B stock of the par value of Ten Dollars (\$10.00) per share, and ~~One Hundred Thousand (100,000)~~ shares of Class C stock without par value.

Further resolved, that upon the organization of said Senior Corporation the proper officers of this corporation be and they hereby are authorized and directed to assign, transfer, set-over and deliver to said Senior Corporation by a proper instrument of assignment and transfer the assets and property specified in Annex A to said agreement and plan of reorganization and recapitalization in exchange for Seventy-One Thousand

111 Five Hundred Seventy-Three (71,573) shares of said Class A stock, ~~One Hundred Thousand (100,000)~~ shares of Class B stock and ~~One Hundred Thousand (100,000)~~ shares of Class C stock of said Senior Corporation, to be issued to the stockholders of this corporation at the rate of one (1) share of Class A stock, Class B stock and Class C stock of said Senior Corporation for each share respectively of Class A stock, Class B stock and Class C stock held by the stockholders of this corporation.

Further resolved, that the proper officers of this corporation be and they hereby are authorized to make or consent to any amendments of, or additions to, said plan or reorganization and recapitalization by said officers deemed necessary or advisable to fully carry out the intents and purposes of said plan of reorganization and recapitalization.

Further resolved, that the proper officers of this corporation be and they hereby are authorized to do all things and to execute all papers and documents by the said officers deemed necessary or advisable to consummate or put into full force and effect said plan of reorganization and recapitalization and any amendments thereof or additions thereto.

There being no further business to come before the meeting, on motion the same adjourned.

HORACE S. MAYNARD, *Secretary*.

Approved:.

FRED J. FISHER, *President*.

We, the undersigned, being Directors of Senior Investment Corporation do hereby certify that we were present at a special meeting of the Board of Directors of said corporation held on the 24th day of August, A. D. 1933, and took part therein, and hereby waive any and all notice of said meeting; that the above and foregoing minutes are a true and correct record and statement of the action taken at said meeting and the resolutions adopted thereat, and we do hereby ratify, approve and confirm all action taken at said meeting and the resolutions adopted thereat, all as set out in the foregoing minutes of the meeting of the Board of Directors.

F. J. FISHER.
ROBERT C. SHIELDS.
HORACE S. MAYNARD.
ANDREW E. BALDWIN.
LEO BUTZEL.

Joint Exhibit A-10

SENIOR INVESTMENT CORPORATION

WAIVER OF NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

We, the undersigned, being all the stockholders of Senior Investment Corporation, a Michigan corporation, do hereby severally waive any and all notice of a special meeting of the stockholders of said corporation, and we do hereby consent and agree that a special meeting of the stockholders of said corporation may and shall be held at the office of the company, 2400 Fisher Building, in the City of Detroit, Michigan, on the 24th day of August, A. D. 1933, at three o'clock in the afternoon.

Dated: August 24, 1933.

F. J. FISHER.
BERTHA M. FISHER.
ANDREW E. BALDWIN.

SENIOR INVESTMENT CORPORATION

MINUTES OF A SPECIAL MEETING OF THE STOCKHOLDERS

113 A Special Meeting of the Stockholders of Senior Investment Corporation was held at the office of the company, 2400 Fisher Building, in the City of Detroit, Michigan, on August 24, 1933, at three o'clock in the afternoon, pursuant to a written waiver of notice of such meeting signed by all of the Stockholders fixing the time and place of said meeting.

The following stockholders were present in person:

Fred J. Fisher,
Andrew E. Baldwin,
Burtha M. Fischer,

being the owners and holders of all of the shares of stock of each class of stock of this corporation outstanding.

Mr. Fred J. Fisher, the President, presided and Mr. Horace S. Maynard acted as Secretary of the meeting.

The President stated that the officers and Board of Directors of this corporation deemed it for the best interests of this corporation and its stockholders that this corporation be reorganized and recapitalized; that at a meeting of the Board of Directors held on this date an agreement and plan of reorganization and recapitalization of Senior Investment Corporation was presented and adopted. A copy of said agreement and plan of reorganization and recapitalization in the form as presented to the meeting of the Board of Directors was thereupon presented and read to this meeting of the stockholders. Thereupon the following resolutions were moved, seconded and unanimously carried by the affirmative vote of the holders of all of the shares entitled to vote, and by the affirmative vote of all of the shares of each class whose rights, privileges and preferences are changed thereby:

Resolved, that the agreement and plan of reorganization and recapitalization of Senior Investment Corporation as presented to this meeting be and the same is hereby ratified and adopted.

Further resolved, that the action of the President and Secretary of this corporation in executing the said agreement and plan of reorganization and recapitalization in the name and on
114 behalf of this corporation be and the same is hereby ratified, approved and confirmed, and that this corporation, be, and does hereby become, a party to said agreement and plan of reorganization and recapitalization.

Further resolved, that the proper officers of this corporation be and they hereby are authorized and directed to cause a corporation to be organized under the name of Senior Corporation, under the laws of the State of Delaware, with an authorized capital stock of Three Hundred Thousand (300,000) shares, consist-

ing of One Hundred Thousand (100,000) shares of Class A stock of the par value of Ten Dollars (\$10.00) per share, One Hundred Thousand (100,000) shares of Class B stock of the par value of Ten Dollars (\$10.00) per share, and One Hundred Thousand (100,000) shares of Class C stock without par value.

Further resolved, that upon the organization of said Senior Corporation the proper officers of this corporation be and they hereby are authorized and directed to assign, transfer, set-over, and deliver to said Senior Corporation by a proper instrument of assignment and transfer the assets and property specified in Annex A to said agreement and plan of reorganization and recapitalization in exchange for Seventy-One Thousand Five Hundred Seventy-Three (71,573) shares of said Class A stock, One Hundred Thousand (100,000) shares of Class B stock and One Hundred Thousand (100,000) shares of Class C stock of said Senior Corporation, to be issued to the stockholders of this corporation at the rate of one (1) share of Class A stock, Class B stock, and Class C stock of said Senior Corporation for each share respectively of Class A stock, Class B stock, and Class C stock held by the stockholders of this corporation.

Further resolved, that the proper officers of this corporation be and they hereby are authorized to make or consent to any amendments of, or additions to, said plan of reorganization and recapitalization by said officers deemed necessary or advisable to fully carry out the intents and purposes of said plan of reorganization and recapitalization.

Further resolved, that the proper officers of this corporation be and they hereby are authorized to do all things and to execute all papers and documents by the said officers deemed necessary or advisable to consummate or put into full force and effect said plan of reorganization and recapitalization and any amendments thereof or additions thereto.

There being no further business to come before the meeting, on motion the same adjourned.

HORACE S. MAYNARD, *Secretary*.

Approved:

F. J. FISHER, *President*.

We, the undersigned, being all the Stockholders of Senior Investment Corporation do hereby certify that we were present at a special meeting of the Stockholders of said corporation held on the 24th day of August, A. D. 1933, and took part therein, and hereby waive any and all notice of said meeting; that the above and foregoing minutes are a true and correct record and statement of the action taken at said meeting and the resolutions adopted thereat, and we do hereby ratify, approve and confirm all action

taken at said meeting and the resolutions adopted thereat, all as set out in the foregoing minutes of the meeting of the Stockholders.

F. J. FISHER.
BURTHA M. FISHER.
ANDREW E. BALDWIN.

116

Joint Exhibit A-11

SENIOR INVESTMENT CORPORATION

WAIVER OF NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

We, the undersigned, being all of the stockholders of Senior Investment Corporation, a Michigan corporation, do hereby severally waive any and all notice of a special meeting of the stockholders of said corporation and we do hereby consent and agree that such a special meeting may and shall be held at the office of the Company, 2400 Fisher Building, in the City of Detroit, Michigan, on the 28th day of August, A. D. 1933, at two o'clock in the afternoon, and we do hereby consent that at such meeting consideration may be given and action taken with respect to the decrease of the capital stock of this corporation and otherwise amending the Articles of Incorporation of this corporation as heretofore amended as may be determined at such special meeting to be advisable and also to transact such other business as may be presented to the meeting.

Dated August 28, 1933.

F. J. FISHER.
BURTHA M. FISHER.
ANDREW E. BALDWIN.

SENIOR INVESTMENT CORPORATION

MINUTES OF SPECIAL MEETING OF STOCKHOLDERS

A Special Meeting of the stockholders of Senior Investment Corporation, a Michigan corporation, was held at the office of the Company, 2400 Fisher Building, in the City of Detroit, Michigan, on August 28, 1933, at two o'clock in the afternoon, pursuant to written waiver of notice of such meeting signed by all of the stockholders fixing the time and place of said meeting.

The following stockholders were present in person:

117 Fred J. Fisher,
Burtha M. Fisher,
Andrew E. Baldwin,

being all of the stockholders of said corporation.

The President, Mr. Fred J. Fisher, acted as Chairman of the meeting, and the Secretary, Mr. Horace S. Maynard, recorded.

The Chairman stated that pursuant to the agreement and plan of reorganization and recapitalization of Senior Investment Corporation, a corporation under the name of Senior Corporation has been duly organized under the laws of the State of Delaware with an authorized capital stock as in said agreement and plan specified. The Chairman further stated that at a meeting of the Board of Directors of said Senior Corporation held on this date, resolutions were adopted ratifying and adopting said agreement and plan of reorganization and recapitalization, and authorizing the proper officers of said Senior Corporation to execute said agreement and plan of reorganization and recapitalization. The Chairman further stated that pursuant to authorization by the Board of Directors and stockholders of this corporation, the proper officers of this corporation had executed in the name and on behalf of this corporation an instrument of assignment and transfer, assigning and transferring to said Senior Corporation the assets and property specified in Annex A to said agreement and plan of reorganization and recapitalization; that said instrument of assignment and transfer had been delivered to said Senior Corporation and that at said meeting of the Board of Directors of Senior Corporation the assignment and transfer of said assets and property and the instrument of assignment and transfer evidencing the same were accepted, and that it was resolved at the meeting of the Board of Directors of said Senior Corporation that said Senior Corporation issue in exchange for said assets and property so transferred to it, to the stockholders of this corporation Seventy-one Thousand Five Hundred Seventy-three (71,573) shares of the

Class A stock, One Hundred Thousand (100,000) shares of
118 the Class B stock and One Hundred Thousand (100,000) shares of the Class C stock of said Senior Corporation, all fully paid and non-assessable, in accordance with the provisions of said agreement and plan of reorganization and recapitalization.

The Chairman stated that the certificates representing said shares of stock would be delivered to the stockholders of this corporation as soon as the same could be prepared and printed.

The Chairman stated that part I of the plan of reorganization and recapitalization had been to all intents and purposes fully consummated, and that in order that said agreement and plan of reorganization and recapitalization be fully put into force and effect, it was necessary to consummate part II of said plan of reorganization and recapitalization, and that said part II of said plan provided for the amendment of the articles of incorporation of this corporation so as to reduce the capital of this corporation by changing the authorized capital stock of this corporation and otherwise amending the articles of incorporation of this corpora-

tion, all as set out in part II of said agreement and plan of reorganization and recapitalization.

Thereupon the following resolution was moved, seconded, and unanimously carried:

Resolved, that the capital stock of this Corporation be decreased from 300,000 shares without any par or nominal value, consisting of the following classes of stock without par value: Class A, 100,000 shares; Class B, 100,000 shares; Class C, 100,000 shares; to 100,00 shares of the par value of \$5.00 per share to be designated as Class A stock, and 100,000 shares of the par value of \$1.00 per share to be designated as Class C stock.

And be it further resolved, that in order to carry out the foregoing resolution the Articles of Incorporation as heretofore amended be further amended by striking out Articles V and IX thereof and inserting in lieu thereof Articles V and IX which shall read as follows:

119

ARTICLE V

(1) The total capital stock authorized is two hundred thousand (200,000) shares, consisting of the following classes of stock:

Class A stock—one hundred thousand (100,000) shares, par value Five Dollars (\$5.00) per share.

Class C stock—one hundred thousand (100,000) shares, par value One Dollar (\$1.00) per share.

(2) The holders of Class A stock shall not be entitled to vote for Directors nor upon any other matter, except as provided by law, but the sole and exclusive voting power, except as provided by law, shall belong to and be vested in the holders of Class C stock.

(3) *Transfers to capital.*—The earnings and profits of the corporation to the extent of \$6,444,239.96 shall from time to time be transferred to capital or capital surplus or surplus, and anything herein contained or otherwise to the contrary notwithstanding, no dividends, whether cumulated or current, shall be paid or set aside on any shares of stock of the corporation until earnings and profits of the corporation in the sum of \$6,444,239.96 have been so transferred to capital or capital surplus or surplus.

(4) *Class A stock.*—The shares of Class A stock shall be entitled to receive, except as herein otherwise provided, when and as declared by the Board of Directors, out of the surplus or net profits of the Corporation, cumulative dividends at the rate of Seven and 35/100ths Dollars (\$7.35) per share per annum, and no more, payable at least semi-annually on the 1st days of March and September of each year, and at such other times as the Board of Directors may from time to time determine. Such dividends may,
120 in the discretion of the Board of Directors, be paid either

in cash or—in whole or in part—in stocks or other securities, at the market value of such stock or securities at the time of such distribution.

In the event of any liquidation or dissolution, or winding up—whether voluntary or otherwise—of the corporation, the Class A stock shall be entitled to receive in full out of the assets—whether capital or surplus—payable either in assets of the corporation other than cash or in cash or partly in cash and partly in such assets, the sum of One Hundred Eighty-three and 76 100ths Dollars (\$183.76) per share, plus an amount equal to Seven and 35 100ths Dollars (\$7.35) per share per annum for the period from July 29, 1929 to August 31, 1933, and plus an amount equal to all accrued but unpaid dividends thereon after August 31, 1933, before any payment shall be made to or on any of the shares of stock of this corporation.

Class A stock may be redeemed, in whole or in part, at any time or from time to time, at the option of the Board of Directors, at such price per share as may be agreed between the shareholder whose shares are to be redeemed and the Company; provided, however, that such agreed price shall in no event exceed One Hundred Eighty-three and 76 100ths Dollars (\$183.76) per share and that such redemption and the price agreed to be paid shall in each instance be approved in writing by the holders of not less than eighty percent (80%) of the Class A shares then outstanding; and there shall be added to such agreed redemption price the unpaid portion of the following amounts on the shares to be redeemed:

- (a) \$7.35 per share per annum for the period from July 29, 1929, to August 31, 1933; and
- (b) An amount equal to all accrued and unpaid dividends thereon after August 31, 1933.

121 The agreement and approval for such optional redemption price may provide that such optional redemption price may be paid in assets of the Corporation other than cash or in cash or partly in such assets and partly in cash. If less than all of the outstanding Class A stock is to be redeemed, the stock to be redeemed shall be selected in such manner as the Board of Directors may determine. In the event it shall be determined to pay for the redemption of any or all of the shares of the Class A stock at any time outstanding either entirely or partially in such assets of the Corporation other than cash, the assets so to be utilized and the credit to be received therefor on the redemption price shall be fixed by agreement between the company and the shareholder whose Class A shares are to be redeemed, subject at all times, however, to the approval in writing of the holders of not less than eighty percent (80%) of the Class A shares then outstanding. Notice of the intention to redeem shall be given by mailing notice

thereof, specifying the date and place of redemption—and if less than all the certificates to be redeemed—to each holder of record of shares to be redeemed at the last address of such holder appearing on the stock registry of this corporation.

On any redemption of any of the Class A stock of this Corporation the Corporation may deposit the aggregate redemption price and/or the assets of this Corporation other than cash to be utilized in such redemption, with any bank or trust company, either in the City of Detroit or City of New York, named in such notice, payable or deliverable as aforesaid to the respective record holders of the shares to be redeemed, on endorsement and surrender of their certificates in this Corporation; and thereupon said holders shall cease to be stockholders with respect to such shares, and from and after the making of such deposit said holders shall have no interest in or claim against the Corporation with

respect to such shares but shall be entitled only to receive
122 said moneys or assets other than cash from said bank or trust company without interest. Any moneys or assets other than cash unclaimed at the end of six years from the date of the said deposit shall be paid or redelivered to the Corporation. No stock so redeemed shall ever be reissued by the corporation.

(5) *Class C stock.*—Subject to the foregoing provisions of this Article V hereof and after an amount equal to the cumulated and unpaid dividends on said Class A stock for the period from July 29, 1929 to August 31, 1933, at the rate of Seven and 35/100ths Dollars (\$7.35) per share per annum and plus an amount equal to all cumulated and unpaid dividends on said Class A stock for the period from and after August 31, 1933, and the dividends for the current semi-annual period shall have been declared and paid, the Board of Directors may at any time and from time to time declare dividends upon the Class C stock of the Corporation.

In the event of liquidation, dissolution or winding up of the Corporation, the Class C stock after payment in full to the holders of the Class A stock of the amounts herein required to be paid to them, shall be exclusively entitled to share ratably in all the remaining assets and property of the Corporation.

(6) The total amount of stock outstanding is 171,573 shares, consisting of 71,573 shares of Class A stock of the par value of Five Dollars (\$5.00) per share, and 100,000 shares of Class C stock of the par value of One Dollar (\$1.00) per share. The 100,000 shares of Class B stock authorized by the original articles of association and issued pursuant thereto have been surrendered to the corporation by the holders thereof for cancellation.

(7) The capital of the corporation shall consist of an
123 amount equal to the aggregate par value of all the shares thereof having par value, and the excess, if any, at any

given time of the total net assets of the corporation over the amount so determined to be capital shall be surplus, all or any part of which surplus the Board of Directors (subject to the limitations contained in the Articles of Incorporation as amended) in its discretion may apply to the reduction of the book value of the fixed assets of the good will or other capital assets of the corporation, or on account of capital losses, or use as otherwise permitted by law.

ARTICLE IX

Special statements pertaining to the primary organization of this corporation and not included in the foregoing requirements:

(a) Except as hereinafter provided in this paragraph, no holder of any stock of this corporation shall be entitled as of right to purchase or subscribe for any part of any unissued stock of this corporation, or any new or additional stock of any class to be issued by reason of any increase in the authorized capital stock of this corporation, or of any issue of securities of the corporation convertible into stock, whether such stock or securities be issued for money or for a consideration other than money. When any such unissued stock or any such additional authorized issue of new stock or such securities convertible into stock are to be issued and disposed of, it may be issued and disposed of by the Board of Directors to such persons, firms, corporations, or associations and upon such terms as the Board of Directors may in their discretion determine without offering to the stockholders then of record of any class of stockholders any thereof on the same terms or any terms; provided, however, that no Class C stock shall be issued or sold except after having first been offered for subscription to the holders of the then outstanding Class C stock according to their respective shares.

124 (b) In the absence of fraud no contract or other transaction, with any other corporation or any individual, association, or firm, shall be in any way affected or invalidated by the fact that any of the directors of the corporation are interested in such other corporation, association, or firm, or personally interested in such contract or transaction, nor shall any director so interested be liable to account to the corporation for any profit made by him from or through any such contract or arrangement so adopted by the Board of Directors or which may be ratified or approved by the holders of the Class C stock, by reason of such director holding such office or the fiduciary relationship thereby established. Any director of this corporation may vote upon any contract or other transactions between this corporation and any subsidiary or affiliated corporation without regard to the

fact that he is also a director of such subsidiary or affiliated corporation.

(c) Any contract, transaction, or act of the corporation or of the Board of Directors, which shall be ratified by a majority of a quorum of the voting stock at any annual meeting or at any special meeting called for such purpose shall be as valid and binding as though ratified by every stockholder of the corporation; provided, however, that any failure of the voting stockholders to approve or ratify such contract, transaction or act, when and if submitted, shall not be deemed in any way to render the same invalid nor to deprive the directors or officers of their right to proceed with such contract, transaction or act.

(d) The Board of Directors may from any funds available, after all dividend payments on the Class A stock have been made or set aside for the current semi-annual period, devote so much of the remaining available funds of the corporation to one or more religious, charitable, scientific, literary, or educational purposes, and to the end may make payment of all or any part of such funds to such Corporation, trust, community chest,

fund, foundation, post or organization of war veterans, institutions, church, school association, or person, or any member of the foregoing as in the sole discretion of the Board of Directors is best qualified to carry out the purposes at the time sought to be fulfilled or accomplished. The matters stated in this paragraph (d) of Article IX shall be construed as objects and purposes of this Corporation, as well as stating the powers of the Board of Directors with respect to such objects and purposes.

(e) Authority is hereby specifically conferred upon the Board of Directors of the Corporation at any time and from time to time, to mortgage, pledge or hypothecate the property of the Corporation, in whole or in part, for the purpose of securing any obligation of the Corporation that may from time to time be created or incurred.

The Chairman stated that upon the filing of said amendment to the articles of incorporation of this corporation, the authorized capital stock of this corporation would be Two Hundred Thousand shares, consisting of One Hundred Thousand (100,000) shares of the Class A stock of the par value of Five Dollars (\$5.00) per share and One Hundred Thousand (100,000) shares of the Class C stock of the par value of One Dollar (\$1.00) per share, and that pursuant to said plan of reorganization and recapitalization it would be necessary for the holders of the Class B stock of this corporation to surrender the same for cancellation, and to provide for the appropriate stamping of the certificates of Class A stock and Class C stock now outstanding to evidence the change in the

capital structure of this Corporation caused by the consummation of said plan of reorganization and recapitalization.

Thereupon the following resolutions were moved and seconded and by the affirmative vote of the holders of all of the shares entitled to vote and by the affirmative vote of the holders of all 126 shares of each class whose right, privileges and preferences are changed thereby adopted:

Resolved, that the holders of the Class B stock of this corporation surrender for cancellation the certificates representing the Class B stock of this corporation; and

Further resolved, that the outstanding certificates of the Class A stock and Class C stock of the Corporation be stamped on the face and reverse side with a legend substantially as follows:

"Class A Stock became stock of the par value of \$5.00 per share and Class C stock became stock of the par value of \$1.00 per share; and Class B stock was eliminated and the powers, preferences and rights and the qualifications, limitations or restrictions with respect to the Class A stock and Class C stock were amended by amendment to the Articles of Incorporation effective August 29, 1933, pursuant to Plan of Reorganization and Recapitalization dated August 23, 1933."

Further resolved, that the President or Vice-President and the Secretary or Assistant Secretary of this Corporation be and they hereby are authorized and directed to execute in the name of this Corporation and to acknowledge the certificate of amendment to the articles of incorporation of this Corporation and to file the same as required by law.

There being no further business to come before the meeting, on motion the same adjourned.

HORACE S. MAYNARD, *Secretary*.

Approved:

F. J. FISHER, *President*.

127

Joint Exhibit A-12

SENIOR INVESTMENT CORPORATION

WAIVER OF NOTICE OF SPECIAL MEETING OF THE BOARD OF DIRECTORS

We, the undersigned, constituting all of the Board of Directors of Senior Investment Corporation, a Michigan corporation, do hereby severally waive any and all notice of a special meeting of the directors of said corporation, and we do hereby consent and agree that a special meeting of the board of directors of said corporation may and shall be held at the office of the Company, 2400

Fisher Building, in the City of Detroit, Michigan, on the 28th day of August, A. D. 1933, at three o'clock in the afternoon.

Dated August 28, 1933.

F. J. FISHER.

ROBERT C. SHIELDS.

HORACE S. MAYNARD.

ANDREW E. BALDWIN.

LEO M. BUTZEL.

SENIOR INVESTMENT CORPORATION

MINUTES OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS

A Special Meeting of the Board of Directors of Senior Investment Corporation was held at the office of the Company at 2400 Fisher Building in the City of Detroit, Michigan, on August 28, 1933, at three o'clock in the afternoon, pursuant to a written waiver of notice of such meeting signed by all of the Directors fixing the time and place of said meeting.

The following Directors were present in person:

Fred J. Fisher,

Robert C. Shields,

Horace S. Maynard,

Andrew E. Baldwin.

128 Mr. Fred J. Fisher, the President, presided, and Mr. Horace S. Maynard acted as Secretary of the meeting.

The Chairman stated that at a special meeting of the Stockholders of this Corporation, held at two o'clock in the afternoon on this date for the express purpose of reducing the capital stock of this Corporation and otherwise amending the Articles of Incorporation of this Corporation, as heretofore amended, resolutions and amendments were approved and adopted by the affirmative vote of the holders of all of the shares entitled to vote, and by the affirmative vote of the holders of all of the shares of each class of stock, whose rights, privileges and preferences are changed thereby decreasing the capital stock of this Corporation from 300,000 shares without any par or nominal value, consisting of 100,000 shares of Class A stock, 100,000 shares of Class B stock, and 100,000 shares of Class C stock, to 100,000 shares of Class A stock of the par value of \$5.00 per share, and 100,000 shares of Class C stock of the par value of \$1.00 per share, and otherwise amending the Articles of Incorporation of this Corporation, as heretofore amended.

The Chairman presented and read to the meeting the minutes of the said special meeting of the Stockholders, and the resolutions and amendments adopted thereat, and on motion duly made

and seconded and by the affirmative vote of all directors present, the following resolutions were adopted:

Resolved that the action of the Stockholders of this Corporation in decreasing the capital stock of this Corporation and otherwise amending the Articles of Incorporation of this Corporation as heretofore amended, all as set out in the resolutions and amendments adopted by the Stockholders of this Corporation at a special meeting of the Stockholders of this Corporation held on this date, and the said resolutions and amendments be and the same are hereby in all respects ratified, approved and confirmed.

Further resolved that the holders of the Class B stock of 129 this Corporation surrender for cancellation the certificates representing the Class B stock of this Corporation; and

Further resolved that the outstanding Certificates of the Class A stock and Class C stock of the Corporation be stamped on the face and reverse side with a legend substantially as follows:

"Class A Stock became stock of the par value of \$5.00 per share and Class C stock became stock of the par value of \$1.00 per share, and Class B stock was eliminated and the powers, preferences and rights and the qualifications, limitations or restrictions with respect to the Class A stock and Class C stock were amended by amendment to the Articles of Incorporation effective August 29, 1933, pursuant to Plan of Reorganization and Recapitulation dated August 23, 1933."

Further resolved that the President or Vice-president and the Secretary or Assistant Secretary of this Corporation be and they hereby are authorized and directed to execute in the name of this Corporation and to acknowledge the certificate of amendment to the articles of incorporation of this Corporation and to file the same as required by law.

There being no further business to come before the meeting on motion the same adjourned.

HORACE S. MAYNARD, *Secretary*.

Approved:

F. J. FISHER, *President*.

130

Joint Exhibit A-13

SENIOR CORPORATION

MINUTES OF FIRST MEETING OF BOARD OF DIRECTORS

The first meeting of the Board of Directors of Senior Corporation was held at 2400 Fisher Building, in the City of Detroit,

Michigan, on the 28th day of August, A. D. 1933, at ten o'clock in the forenoon.

Present—

Fred J. Fisher,
Robert C. Shields,
Andrew E. Baldwin,
Horace S. Maynard.

Absent—

Leo M. Butzel.

Mr. Fisher was chosen temporary Chairman and Mr. Maynard was chosen temporary secretary of the meeting.

The Secretary presented and read the following waiver of notice of the meeting, signed by all the directors.

WAIVER OF NOTICE, FIRST MEETING OF THE BOARD OF DIRECTORS

We, the undersigned, being all the directors of Senior Corporation do hereby waive notice of the time, place and purpose of the first meeting of the board of directors of said corporation.

We designate the 28th day of August, 1933, at ten o'clock in the forenoon, as the time, and 2400 Fisher Building, Detroit, Michigan, as the place of said meeting, the purpose thereof being to adopt by-laws, elect officers, authorize the issue of the capital stock, complete the organization of said corporation, and to transact such other business as may be necessary or advisable.

Dated August-28, 1933.

F. J. FISHER.
ROBERT C. SHIELDS.
ANDREW E. BALDWIN.
HORACE S. MAYNARD.
LEO M. BUTZEL.

131 The minutes of the meeting of incorporators were read and approved.

Upon motion, duly made, seconded and carried, it was

Resolved, that the by-laws adopted at the incorporators' meeting be adopted by this board as and for the by-laws of this corporation.

The following persons were nominated for officers of the corporation to serve until their respective successors are chosen and qualify:

President—Fred J. Fisher.
Vice-President—Andrew E. Baldwin.
Secretary—Horace S. Maynard.
Treasurer—Horace S. Maynard.
Assistant-Treasurer—John C. Moons.

Ballot having been duly had and all the directors present having voted, the chairman announced that the aforesaid persons had been unanimously elected to the offices set before their respective names.

The President thereupon took the chair.

It was ordered that the secretary be sworn to the faithful discharge of his duty and he thereupon subscribed and swore to the oath of office and entered upon the discharge of his duties.

Said Secretary's oath is as follows:

SECRETARY'S OATH

STATE OF MICHIGAN,

County of Wayne, ss:

I, Horace S. Maynard, do solemnly promise and swear that I will faithfully, impartially and justly perform the duties of Secretary of Senior Corporation, a corporation of the State of Delaware, according to the best of my abilities and understanding. So help me God.

HORACE S. MAYNARD:

132 Subscribed and sworn to before me this 28th day of August, A. D. 1933.

[SEAL]

JOHN C. MOONS, *Notary Public,*
Wayne County, Michigan.

My Commission Expires: November 14, 1936.

Upon motion, duly made, seconded and carried, it was

Resolved, that the forms of stock certificates presented and read be approved and adopted, and that the Secretary be instructed to insert a specimen thereof in the minute book.

Upon motion, duly made, seconded and carried, it was

Resolved, that the seal, an impression of which is herewith affixed, be adopted as the corporate seal of the corporation.

The Secretary was authorized and directed to procure the proper corporate books.

Upon motion, duly made, seconded and carried, it was

Resolved (here insert bank resolution).

Upon motion, duly made, seconded and carried, it was

Resolved, that the Corporation Trust Company be and is hereby appointed the agent of this corporation, in charge of the principal office in Delaware and of the books required by law to be kept in that office, and the agent upon whom process against this corporation may be served in accordance with the laws of Delaware.

Further resolved, that said Trust Company may apply to and act upon the instructions of Stevenson, Butzel, Eaman and Long, the counsel of this corporation, in respect to any questions arising in connection with said agency.

Further resolved, that the Secretary be and is hereby
133 authorized to sign and seal with the corporation's seal a
certificate of authorization to said Trust Company in the
form submitted at this meeting.

The President stated that this corporation was organized pursuant to an agreement and plan of reorganization and recapitalization of Senior Investment Corporation, a Michigan corporation, and which agreement and plan was executed by said Senior Investment Corporation and all of its stockholders. The President thereupon presented and read to the meeting a copy of said agreement and plan of reorganization and recapitalization, and upon motion duly made and seconded, and by the affirmative vote of all of the directors present, a copy of said agreement and plan of reorganization and recapitalization as presented and read to the meeting, was ordered initialed by the Secretary and to be inserted in the minute book of this corporation immediately following the minutes of this meeting.

Thereupon, on motion duly made and seconded and by the affirmative vote of all of the directors present, the following resolutions were adopted:

Resolved, that the agreement and plan of reorganization and recapitalization of Senior Investment Corporation be and the same hereby is adopted and ratified, and that this corporation does hereby become a party thereto, and the proper officers of this corporation be and they hereby are authorized and directed to execute the said agreement and plan of reorganization and recapitalization in the name and on behalf of this corporation, with the same force and effect as if said agreement and plan of reorganization and recapitalization had been so executed by said officers in the first instance.

The Chairman presented to the meeting an instrument of assignment and transfer duly executed in the name and on behalf of said Senior Investment Corporation, assigning and transferring to this corporation the assets and property specified in Annex A to
134 said agreement and plan of reorganization and recapitalization. Thereupon, on motion duly made and seconded, and by the affirmative vote of all of the directors present, the following resolutions were adopted:

Resolved, that this corporation does hereby accept the assignment and transfer by said Senior Investment Corporation to this corporation of the assets and property specified in Annex A to said agreement and plan at the values therein stated, and does hereby accept the delivery of the said instrument of assignment and transfer evidencing the same, and that in exchange therefor this corporation issue to the stockholders of said Senior Investment Corporation Seventy-One Thousand Five Hundred Seventy-Three

(71,573) shares of the Class A stock, One Hundred Thousand (100,000) shares of the Class B stock and One Hundred Thousand (100,000) shares of the Class C stock of this corporation all fully paid and nonassessable at the rate of One (1) share of Class A stock, Class B stock and Class C stock of this corporation for each share respectively of Class A stock, Class B stock and Class C stock of the Senior Investment Corporation held by such stockholders.

Further resolved, that the Board of Directors does hereby adjudge and declare the assets and property to be received in exchange for the issuance of 71,573 shares of Class A stock of the par value of \$10.00 per share, 100,000 shares of Class B stock of the par value of \$10.00 per share and 100,000 shares of Class C Stock without par value of this corporation to be of the value of at least \$1,715,731.00 and necessary for the business of this corporation.

Further resolved, that the capital of this corporation be and the same hereby is fixed at the sum of \$1,715,731.00.

Further resolved, that the proper officers of this corporation be and they hereby are authorized to make or consent to any amendments of, or additions to, said plan by said officers deemed
135 necessary or advisable to fully carry out the intents and purposes of said plan of reorganization and recapitalization.

Further resolved, that the proper officers of this corporation be and they hereby are generally authorized and directed to do all things and to execute any and all papers or documents by said officers deemed necessary or advisable to consummate and put into full force and effect said plan of reorganization and recapitalization.

There being no further business to come before the meeting, on motion the same adjourned.

HORACE S. MAYNARD, *Secretary.*

Approved:

F. J. FISHER, *President.*

F 439-9-32—Corporation-Resolution
ABC-10-25-32

I, Horace S. Maynard, Secretary of Senior Corporation, the corporation described herein as "this corporation," hereby certify that the following is a true copy of resolutions adopted by the Board of Directors of this corporation at a meeting duly held, a quorum being present, on August 29th, 1933 and that such resolutions are now in full force and effect:

Resolved, that Bankers Trust Company of the City of New York is designated a depository of this corporation; and

Further resolved, that all drafts, checks, and other instruments or orders for the payment of money drawn against the account

or accounts of this corporation shall be signed by any two of the following:

President.

Vice President.

Secretary and Treasurer.

- 136° Further resolved, that the depositary above designated is authorized to place to the credit of the account, or any of the accounts, of this corporation, funds, drafts, checks, or other property delivered to it for deposit for account of this corporation, whether or not indorsed with the name of this corporation by rubber stamp, facsimile, mechanical, manual, or other signature, and any such indorsement by whomsoever affixed shall be the indorsement of this corporation, provided that if any such funds, drafts, checks, or other property shall bear, or be accompanied by, directions (by whomever made) for deposit to a specific account, then such deposit shall be to the credit of such specific account; and

Further resolved, that the depositary is hereby directed to accept and/or pay and/or apply without limit as to amount, without inquiry and without regard to the application of any such draft, check, instrument or order for the payment of money, or the proceeds thereof, any draft, check, instrument, or order for the payment of money drawn on such account or accounts, which draft, check, instrument, or order for the payment of money bears the signature or signatures as required by these resolutions, including drafts, checks, instruments, or orders for the payment of money, to the order of any person whose signature appears thereon, or of any other officer or officers, agent, or agents of this corporation, which may be deposited with, or delivered or transferred to, the depositary or to any other person, firm, or corporation, for the personal credit or account of any such officer or agent; and the depositary shall not be liable for any disposition which any such officer or agent shall make of all or any part of any draft, check, instrument or order for the payment of money drawn on such account or accounts or the proceeds thereof, notwithstanding that such disposition may be for the personal account or benefit or in payment of the individual obligation of any such officer or agent to the depositary or otherwise.

	Name	Title
137	Fred J. Fisher.....	President.
	Andrew E. Baldwin.....	Vice President.
	Horace S. Maynard.....	Secretary and Treasurer.

In witness whereof, I have hereunto subscribed my signature and affixed the seal of this corporation this twenty-ninth day of August, 1933.

[SEAL]

HORACE S. MAYNARD,*

Secretary.

Confirmed

(Official Title)

GENERAL RESOLUTION—FORM B

I certify that the following is a true copy of a certain resolution of the Board of Directors of Senior Corporation, a Corporation duly organized and existing under the laws of Delaware, having its principal place of business in Wilmington, Delaware, duly adopted in accordance with the By-Laws at, and recorded in the minutes of, a meeting of the said Board on August 29th, 1933, and not subsequently rescinded or modified:

RESOLVED

1. That an account or accounts be opened for and in the name of this Corporation with The National City Bank of New York, Head Office, and that the said Bank is hereby authorized to pay or otherwise honor any checks, drafts or other orders issued from time to time for debit to said account or accounts when signed by any two, President, Vice President, Secretary and Treasurer, inclusive of any such in favor of any said person(s), and that the said account or accounts be reconciled from time to time by said person(s), or his or their designees.

138 2. That President or Vice President or Treasurer is/are hereby authorized for and on behalf of this Corporation to: Discount and/or negotiate notes, drafts or other commercial paper; Apply for letters or other forms of credit; Borrow money, directly or indirectly, with or without security; Pledge or otherwise hypothecate any property of the Corporation, and to transact any and all such other business with said Bank as at any time may be deemed by the said person(s) transacting the same to be advisable, and in reference to any of the authority hereby conferred to make, enter into, execute and deliver to said Bank such negotiable or non-negotiable instruments, indemnity or other agreements, assignments, endorsements, hypothecations, pledges, receipts or other undertakings or obligations as to said person(s) executing the same may seem necessary or desirable, and *and* all withdrawals of money and/or other transactions heretofore had in behalf of this corporation with said Bank being hereby ratified, confirmed

*If the Secretary under the powers conferred by the above resolutions is authorized to sign alone, the certification of the resolutions must be confirmed below by another officer.

and approved; also, the said Bank may rely upon the authority conferred by this entire resolution until the receipt by it of a certified copy of a resolution of this Board revoking or modifying the same.

I further certify that the following are the officers of the said Corporation, duly qualified and now acting as such:

<i>Name</i>	<i>Title of office held</i>
Fred J. Fisher.....	President.
Andrew E. Baldwin.....	Vice President.
Horace S. Maynard.....	Secretary and Treasurer.

In witness whereof, I have hereunto subscribed my name and affixed the seal of the said Corporation this 29th day of August, 1933.

[CORPORATE SEAL]

HORACE S. MAYNARD,
Secretary.

139 CORPORATE RESOLUTION—SENIOR CORPORATION

I hereby certify to J. P. Morgan & Co., of the City and State of New York, that at a meeting of the Board of Directors of Senior Corporation of Delaware, duly called and held at No. 2400 Fisher Building, in the City of Detroit, State of Michigan, on the 29th day of August, 1933, the following resolutions were duly adopted and are now in full force and effect.

Resolved that J. P. Morgan & Co., of the City and State of New York, be designated as a depository of this corporation and that funds of this corporation deposited with said J. P. Morgan & Co., be subject to withdrawal upon checks, notes, drafts, bills of exchange, acceptances, undertakings or other orders for the payment of money when signed on behalf of this corporation by any two (2) of its following officers, to wit:

<i>Name</i>	<i>Office</i>
Fred J. Fisher.....	President.
Andrew E. Baldwin.....	Vice President.
Horace S. Maynard.....	Secretary-Treasurer.

Resolved, that J. P. Morgan & Co., is hereby authorized to pay any such orders and also to receive the same for credit of or in payment from the payee or any other holder without inquiry as to the circumstances of issue or the disposition of the proceeds even if drawn to the individual order of any signing officer or tendered in payment of his individual obligations.

Resolved that the Secretary of this corporation be and he hereby is authorized to certify to J. P. Morgan & Co., the foregoing resolutions and that the provisions thereof are in conformity with the character and bylaws of this corporation.

I further certify that there is no provision in the charter or by-laws of said corporation limiting the power of the Board

140 of Directors to pass the foregoing resolutions and that the same are in conformity with the provisions of said charter and bylaws.

I further certify that the present officers of this corporation are as follows:

<i>Name</i>	<i>Office</i>
Fred J. Fisher	President.
Andrew E. Baldwin	Vice President.
Horace S. Maynard	Secretary-Treasurer.

In witness whereof, I have hereunto set my hand as Secretary of said corporation and affixed the corporate seal this 5th day of September, 1933.

[CORPORATE SEAL]

HORACE S. MAYNARD,
Secretary.

Confirmed by

NOTE: To be confirmed only if secretary is authorized to sign alone on behalf of corporation.

141 In the Tax Court of the United States

ESTATE OF FRED J. FISHER, CHARLES T. FISHER, EDWARD F. FISHER,
AND LEO M. BUTZEL, EXECUTORS, AND BURTHA M. FISHER, PETI-
TIONERS

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket No. 104601

Benjamin E. Jaffe, Esq., and R. M. O'Hara, Esq., for the peti-
tioner.

Philip M. Clark, Esq., for the respondent.

Memorandum opinion

Entered February 9, 1944

STERNHAGEN, Judge: The Commissioner determined a deficiency of \$1,231,636.92 in 1934 income tax. A distribution in 1934 by Senior Investment Corporation of 43,300 common shares of General Motors Corporation was determined to be a taxable dividend. The facts are stipulated.

Fred J. Fisher and his wife, Burtha M. Fisher, residents of Detroit, Michigan, filed a 1934 joint federal income tax return at Detroit. Fred J. Fisher died on July 14, 1941. On January 31, 1934, he owned 71,573 Class A shares of Senior Investment Corporation, a Michigan corporation—all of the shares of that class

then outstanding. His cost or basis of the 71,573 Class A shares was not less than \$1,723,881.25. On January 31, 1934, without surrendering any of the Class A shares, he received as a distribution on the Class A shares 43,300 common shares of General Motors Corporation having a value of \$1,723,881.25.

Senior Investment Corporation was incorporated on July 29, 1929, with 300,000 shares of no par value stock consisting of 100,000 shares each of Class A, B, and C stock. The cost to the Fishers and the July 29, 1929, fair market value of the assets, principally securities, transferred by them to Senior Investment Corporation, and the number of shares issued to them therefor by Senior are as follows:

142	Cost	July 29, 1929, fair market value	Number of senior shares issued
Fred J. Fisher	\$12,957,242.88	\$42,943,427.76	{ 71,573 Class A
	894,000.02	40,000,000.00	{ 79,805 Class C
Burtha M. Fisher	699,350.00	5,486,250.00	{ 100,000 Class B
			{ 9,143 Class A
			{ 10,195 Class C

The remaining 10,000 Class C shares were issued to an employee for no payment. On December 9, 1931, Senior Investment Corporation retired the 9,143 Class A shares held by Burtha M. Fisher.

In computing its gain or loss from the sale or other disposition of assets received for its shares on incorporation, Senior Investment Corporation used the fair market value of such assets on the date received, as a result of which the corporation had a large operating deficit on January 31, 1934, when the General Motors Corporation shares were distributed to Fisher. If it had used the transferors' cost instead, as was done by the Commissioner, it would have had on January 31, 1934, surplus in excess of \$1,723,881.25 available for the distribution of dividends.

Whether, in 1934, Fisher received a taxable dividend measured by the fair market value of the General Motors shares depends upon whether Senior Investment Corporation had a surplus available for the distribution of dividends, and that in turn depends upon whether the corporation, in computing its gain or loss on sales of assets acquired by it from the Fishers in exchange for its own shares, should have used the fair market value of such assets at the time of the exchange or the transferors' cost. It has been held that the corporation's basis of assets thus acquired is the fair market value when acquired. *Senior Investment Corp.*, 2 T. C. 124, 139; *Dorothy Whitney Elmhirst*, 41 B. T. A. 348; *W. S. Farish & Co.*, 38 B. T. A. 150, affirmed 104 Fed. (2d) 833; *F. J. Young Corp.*, 35 B. T. A. 860, affirmed 103 Fed. (2d) 137.

The Commissioner relies upon Article 115-1 of Treasury Regulations 86 under the 1934 Act, and later regulations containing

143 similar provisions, and Section 501 of the second Revenue Act of 1940, amending Section 115 so as to provide that the basis to be used for earnings and profits is the substituted basis used for income tax purposes. However section 501 (c) provides that the amendment was not to be applied in any case pending on September 20, 1940, as this case was. In view of Section 501 (c), this decision is not controlled by the Revenue Act of 1940 but by the above decisions. It follows that the distribution of the 43,300 shares of common stock of General Motors Corporation to Fisher in 1934 was not a taxable dividend to him.

Decision will be entered under Rule 50.

In the Tax Court of the United States

Decision

Entered March 23, 1944

Pursuant to the Court's Memorandum Opinion, entered February 9, 1944, the respondent filed a computation which the petition agrees is in accordance with the Memorandum Opinion. It is

Decided that there is a deficiency of \$212,716.47 in income tax for 1934.

[SEAL]

(Signed) J. M. STERNHAGEN, *Judge*.

144 In United States Circuit Court of Appeals, Sixth Circuit

Petition for review

Filed June 22, 1944

Joseph D. Nuhan, Jr., Commissioner of Internal Revenue, the above-named petitioner hereby petitions for review by the United States Circuit Court of Appeals for the Sixth Circuit of the decision entered by The Tax Court of the United States on March 23, 1944, deciding that there is a deficiency in the income tax liability of the Estate of Fred J. Fisher, Charles T. Fisher, Edward F. Fisher, and Leo M. Butzel, Executors, and Burtha M. Fisher, for the year 1934 in the amount of \$212,716.47.

The joint Federal income tax return for the year in question was filed by Fred J. Fisher (now deceased) and Burtha M. Fisher husband and wife, with the Collector of Internal Revenue for the District of Michigan, whose office is located at Detroit, Michigan.

(Signed) SAMUEL O. CLARK, JR.,
CAR

Assistant Attorney General,

(Signed) J. P. WENCHEL,
CAR

*Chief Counsel, Bureau of Internal Revenue,
Attorneys for Petitioner.*

In United States Circuit Court of Appeals

Notice of filing petition for review

Filed June 22, 1944

To: BENJAMIN E. JAFFEE, Esq.,
2510 Fisher Building, Detroit, Michigan.

You are hereby notified that the Commissioner of Internal Revenue did, on the 22nd day of June 1944, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Sixth Circuit of the decision of The Tax Court heretofore rendered in the above-entitled cause. A copy of the petition for review as filed is hereto attached and served upon you.

Dated this 22nd day of June 1944.

B. D. GAMBLE,
Clerk, The Tax Court of the United States.

Service of the above and foregoing notice, together with a copy of the petition for review mentioned therein, is hereby acknowledged this ----- day of June 1944.

Counsel for Respondents.

In United States Circuit Court of Appeals

Notice of filing petition for review

Filed July 24, 1944

To: Mr. Charles T. Fisher, Mr. Edward F. Fisher, and Leo M. Butzel, Executors of the Estate of Fred J. Fisher and Mrs. Burtha M. Fisher, Detroit, Michigan.

You are hereby notified that the Commissioner of Internal Revenue did, on the 22nd day of June 1944, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Sixth Circuit of the decision of The Tax Court heretofore rendered in the above-entitled cause. A copy of the petition for review as filed is hereto attached and served upon you.

Dated this 22nd day of June 1944.

(Signed) J. P. WENCHEL,
CAR

Chief Counsel,
Bureau of Internal Revenue.

146 Personal service of the above and foregoing notice, together with a copy of the petition for review mentioned therein, is hereby acknowledged this 30th day of June, 1944.

(Sgd.) LEO M. BUTZEL,

One of the Executors of Estate of Fred J. Fisher, Deceased (without prejudice),

(Sgd.) BERTHA M. FISHER,

Respondents.

In United States Circuit Court of Appeals

Statement of points

Filed August 29, 1944

Comes now the petitioner on review herein, by his counsel of record, and makes this concise statement of points on which he intends to rely on the review herein, to wit:

1. The Tax Court of the United States erred in ordering and deciding that there is a deficiency in income tax for the taxable year 1934 in the amount of only \$212,716.47.

2. The Tax Court of the United States erred in failing and refusing to sustain that portion of the deficiency in tax found by the Commissioner which arose from his determination that the decedent taxpayer received a taxable dividend measured by the fair market value of the shares of stock of the General Motors Corporation distributed to him by the Senior Investment Corporation.

3. The Tax Court of the United States erred in holding and deciding "that the distribution of the 43,300 shares of common stock of General Motors Corporation to Fisher in 1934 was not a taxable dividend to him."

4. The Tax Court of the United States erred in holding and deciding, in effect that the cost to the Senior Investment Corporation of the assets received by it upon its organization from 147 the decedent taxpayer in a tax-free reorganization was, for the purpose of determining whether or not the distribution here in question constituted a taxable dividend, the market value of such assets at the time of the exchange rather than the cost of such assets to the transferor.

5. The Tax Court of the United States erred in failing to hold and decide that the basis of the Senior Investment Corporation's transferor, which is the statutory basis for computing taxable net income, is to be used in determining the earnings and profits of the Senior Investment Corporation available for distribution as dividends upon the distribution of shares of General Motors Corporation made to the decedent taxpayer in 1934.

6. The Tax Court of the United States erred in that its opinion and decision are contrary to law and the Commissioner's regulations.

(Signed) SAMUEL O. CLARK, Jr.,

CAR

Assistant Attorney General,

(Signed) J. P. WENCHEL,

CAR

*Chief Counsel, Bureau of Internal Revenue,
Attorneys for Petitioner.*

STATEMENT OF SERVICE

A copy of this statement of points was mailed to Benjamin E. Jaffe, Esq., 2510 Fisher Building, Detroit, Michigan, attorney for respondent, this date, August 29, 1944.

(Sgd.) CHAS. E. LOWERY,

Special Attorney,

Bureau of Internal Revenue.

148

In The Tax Court of the United States

Designation of contents of record on review

Filed August 29, 1944

To the Clerk of The Tax Court of the United States:

Now comes Joseph D. Nunan, Jr., Commissioner of Internal Revenue, the petitioner on review herein, by and through his attorneys, Samuel O. Clark, Jr., Assistant Attorney General, and J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for the purpose of the review which he, the said petitioner on review, has heretofore taken to the United States Circuit Court of Appeals for the Sixth Circuit, hereby designates for inclusion in the record on review the following:

1. Docket entries.

2. Pleadings:

(a) Petition, including annexed copy of notice of deficiency and statement, with the following exceptions:

Eliminate subparagraphs (A) and (B) on page 2 of the petition, subparagraphs (A) and (B) on pages 3 to 7, inclusive, of the petition, subparagraph (D) on pages 11 to 15, inclusive, of the petition and paragraphs 1, 2 on page 16 of the petition.

Eliminate (1) sheet 3 of the statement, (2) paragraph "(D) continued" on sheet 4 of the statement, and (3) paragraphs (F) and (G) on sheet 5 of the statement.

(b) Answer.

3. Order for substitution of parties entered October 19, 1942.
4. Stipulation of Facts.
5. Memorandum opinion entered February 9, 1944.
6. Decision entered March 23, 1944.
7. Petition for review and notices of filing petition for review.
8. Statement of points.
9. Order extending time for transmission of certified record sur petition for review not included in record.
10. This designation of contents of record on review.

149 Wherefore, it is requested that copies of the record as above designated be prepared and transmitted to the United States Circuit Court of Appeals for the Sixth Circuit in accordance with the rules of said Court.

(Sgd.) SAMUEL O. CLARK, Jr.,
CAR
Assistant Attorney General,

(Sgd.) J. P. WENCHEL,
CAR

*Chief Counsel, Bureau of Internal Revenue,
Attorneys for Petitioner.*

STATEMENT OF SERVICE

A copy of this designation of contents of record on review was mailed to Benjamin E. Jaffe, Esq., 2510 Fisher Building, Detroit, Michigan, attorney for respondent, this date, August 29, 1944.

(Sgd.) CHAS E. LOWERY,
*Special Attorney,
Bureau of Internal Revenue.*

[Clerk's certificate to foregoing transcript omitted in printing.]

150 In the Tax Court of the United States

Order enlarging time

Upon motion of counsel for petitioner, it is

Ordered that the time for preparation, transmission, and delivery of the record sur petition for review of the above-entitled

proceeding in the United States Circuit Court of Appeals for the Sixth Circuit is extended to September 20, 1944.

(Signed) CHARLES P. SMITH,
Acting Presiding Judge.

Dated: Washington, D. C., July 17, 1944.

Now, Sept. 9, 1944, the foregoing order is certified from the record as a true copy.

[SEAL]

B. D. GAMBLE, *Clerk,*
The Tax Court of the United States.

151 In United States Circuit Court of Appeals for the Sixth Circuit

Cause argued and submitted February 12, 1945

Before HICKS, ALLEN, and MARTIN, JJ.

This cause is argued by H. P. Zarky for Petitioner and by R. M. O'Hara for Respondents and is submitted to the court.

In United States Circuit Court of Appeals, Sixth Circuit

Judgment

Entered March 26, 1945

On petition to review a decision of the Tax Court of the United States.

This cause came on to be heard on the transcript of the record from the Tax Court of the United States, and was argued by counsel.

On Consideration Whereof, it is now ordered, adjudged, and decreed by this Court that the decision of the said Tax Court in this cause be and the same is hereby affirmed.

In United States Circuit Court of Appeals, Sixth Circuit

No. 9858

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

CHARLES T. FISHER, EDWARD F. FISHER, AND LEO M. BUTZEL, EX-
ECUTORS OF THE ESTATE OF FRED J. FISHER, AND BURTHA M.
FISHER, RESPONDENTS

Petition to Review a Decision of the Tax Court of the United States

Decided March 26, 1945

Before HICKS, ALLEN, and MARTIN, Circuit Judges

Opinion

Filed March 26, 1945

ALLEN, Circuit Judge. The principal question presented in this case is whether the taxpayer received in 1934 a taxable dividend paid out of earnings and profits of the Senior Investment Corporation. The Commissioner determined a deficiency of \$1,231,636.92, based primarily upon a distribution by the Senior Investment Corporation in 1934 of 43,400 shares of common stock of General Motors Corporation. The Tax Court held that the Senior Investment Corporation had a large operating deficit on the date of the distribution of the shares, and that no taxable dividend was received.

The material facts as stipulated and found by the Tax Court are as follows:

The tax return involved was made for 1934 as a joint return by Fred J. Fisher and his wife, Burtha M. Fisher, residents of Detroit, Michigan. In January 1934, Fisher owned all of the outstanding Class A shares of the Senior Investment Corporation, 71,573 in number. The cost to him of these shares was not less than \$1,723,881.25. On January 31, 1934, without surrendering any of the Class A shares Fisher received as a distribution on the stock 43,300 shares of General Motors common stock having a value of \$1,723,881.25. The Senior Investment Corporation was incorporated July 29, 1929, with 300,000 shares of no par value stock, consisting of 100,000 shares each of Class A, B, and C stock. Immediately following the incorporation, the Fishers transferred certain assets, particularly securities, to the Senior Investment Corporation. The cost to the Fishers and the July 29, 1929, fair market value of the assets transferred and the number of shares issued to them therefor by the Senior Investment Corporation are shown in the following table:

	Cost	July 29, 1929, Fair Market Value	Number of Shares of Senior Investment Corporation
Fred J. Fisher	\$1,147,242.49	\$45,445.07 74	71,573 Class A
Burtha M. Fisher	\$576,638.76	\$5,016,108.17	29,927 Class C
	\$1,723,881.25	\$5,461,253.14	101,500 Class B
			101,500 Class C

The remaining 10,000 Class C shares were issued to an employee for no consideration. On December 9, 1931, the Senior Investment Corporation retired the 9,143 Class A shares held by Burtha M. Fisher.

In computing its gain or loss from the sale or other disposition of the assets received for its shares on incorporation, the Senior Investment Corporation used as a basis the fair market value of such assets on the date received. As a result, the corporation had a large operating deficit on January 31, 1934, when the General Motors Corporation shares were distributed to Fisher. The Commissioner used the transferors' cost as a basis, and thus computed,

the books of the corporation showed a surplus in excess of
153 \$1,723,881.25 available for distribution of dividends. Since

Fisher did not receive a taxable dividend unless the Senior Investment Corporation had a surplus available for distribution of dividends, the case turns upon the question whether the corporation, in computing its gain or loss on the sale of the assets acquired by it from the Fishers in exchange for its own stock, should have used as a basis the fair market value of the assets at the time of the exchange, or the transferors' cost. The Tax Court, relying upon decisions of its own and of other courts [Cf. Commissioner v. W. S. Farish & Co., 104 Fed. (2d) 833 (C. C. A. 5); Commissioner v. F. J. Young Corp., 103 Fed. (2d) 137 (C. C. A. 3)] held that the basis used by the Senior Investment Corporation was correct and declined to sustain the deficiency.

The Commissioner contends that when a corporation acquires assets in a transaction where the transferors' gain or loss is not recognized for tax purposes, the corporation's earnings and profits for dividend purposes are determined in the same manner as its taxable gains. The transactions between the Fishers and the Senior Investment Corporation were tax free within § 112 of the Revenue Act of 1934.

The statute which governs this situation was first enacted in 1940 and its material portions are printed in the margin.¹ This

¹ Second Revenue Act of 1940, c. 757, 54 Stat. 1004.

SEC. 501. EARNINGS AND PROFITS OF CORPORATIONS.

(a) Under Internal Revenue Code. Section 115 of the Internal Revenue Code is amended by inserting at the end thereof the following new subsections:

"(1) Effect on Earnings and Profits of Gain or Loss and of Receipt of Tax-Free Distributions. The gain or loss realized from the sale or other disposition (after February 28, 1913) of property by a corporation—

"(1) for the purpose of the computation of earnings and profits of the corporation, shall be determined, except as provided in paragraph (2), by using as the adjusted basis the adjusted basis (under the law applicable to the year in which the sale or other disposition was made for determining gain, except that no regard shall be had to the value of the property as of March 1, 1913; but

"(2) for the purpose of the computation of earnings and profits of the corporation for any period beginning after February 28, 1913, shall be determined by using as the adjusted basis the adjusted basis (under the law applicable to the year in which the sale or other disposition was made) for determining gain."

(Continued on page 109.)

section in effect provides that corporate earnings and profits on the sale of assets of the corporation are to be computed in the year when recognized in the same manner as taxable gains are calculated. But the statute also provides that the amendments made by the section shall not affect the tax liability of any transferor

for any year which on September 20, 1940, was pending
154 before or was theretofore determined by the Board of Tax

Appeals or any court of the United States. The petition in this case was filed September 6, 1940, and therefore the proceeding is not governed by the amendments of 1940. In this respect the case is sharply differentiated from *Commissioner v. Wheeler, et al., Extres.*, — U. S. —, decided March 26, 1945, which held valid and applicable Treasury Regulations 101, Art. 115-3, embodying the provisions of the 1940 amendment as to the determination of earnings and profits of a corporation for dividend purposes. Relying upon the cited case, the Commissioner contends that Regulation 86, Art. 115-1, a predecessor of Art. 115-3, requires reversal of the decision of the Tax Court. We think that Art. 115-1 does not govern here, for Treasury Decision No. 5024, 1940-2, Cum. Bull. 110, declares that while the rules stated in the regulations are applicable to cases which were pending before the Board of Tax Appeals on September 20, 1940, the limitation of Sec. 501 (c) affects the tax liability for the specific year or years actually so pending on or determined prior to September 20, 1940. This decision applies the saving clause of Sec. 501 (c) to cases governed by Art. 115-1. As a contemporaneous interpretation of the meaning of the regulations by those who are appointed to carry out its provisions, Treasury Decision No. 5024 has great weight and is entitled to respect. *Augustus v. Commissioner*, 114 Fed. (2d) 38 (C. C. A. 6), certiorari denied, 313 U. S. 585. Cf. *Bowles, Admr. v. Seminole Rock & Sand Co.*, — U. S. —, decided June 4, 1945.

In view of the fact that the transaction involved took place on January 31, 1934, and Art. 115-1 was promulgated on February 11, 1935, Treasury Decision No. 5024 may be viewed as a limitation on its retroactive effect. Since the decision was made by the Com-

(Continued from page 108).

Gain or loss so realized shall increase or decrease the earnings and profits to, but not beyond, the extent to which such a realized gain or loss was recognized in computing net income under the law applicable to the year in which such sale or disposition was made. Where in determining the adjusted basis used in computing such realized gain or loss the adjustment to the basis differs from the adjustment proper for the purpose of determining earnings or profits, then the latter adjustment shall be used in determining the increase or decrease above provided.

(b) Effective Date of Amendment. The amendment made by subsection (a) shall be applicable to taxable years beginning after December 31, 1938.

(c) Under Prior Acts. For the purposes of the Revenue Act of 1928 or any prior Revenue Act the amendments made to the Internal Revenue Code by subsection (a) of this section shall be effective as if they were a part of each such Revenue Act on the date of its enactment. Nothing in this subsection shall affect the tax liability of taxpayer for any year which, on September 20, 1940, was pending before, or was theretofore determined by, the Board of Tax Appeals, or any court of the United States.

missioner with the approval of the Secretary of the Treasury, this limitation upon the retroactivity of the regulations has a double congressional sanction, one arising from the saving clause in Sec. 501 (c), the other from the specific authority granted the Commissioner with approval of the Secretary, under Sec. 3791 (b) of the Internal Revenue Code, to limit the retroactive effect of any ruling, regulation or treasury decision relating to the internal revenue laws in precisely this way.

The decision of the Tax Court is affirmed.

155 [File endorsement omitted.]

157 In the United States Circuit Court of Appeals for the Sixth Circuit

[Title omitted.]

Petition of the Commissioner for rehearing

Filed April 7, 1945

We respectfully submit that the opinion in the above entitled case, decided March 26, 1945, is squarely in conflict with the decision of the Supreme Court in *Commissioner v. Wheeler*, decided March 26, 1945, not yet reported. In the *Wheeler* case, it was held that Article 115-3, Treasury Regulations 101, promulgated under the Revenue Act of 1938, c. 289, 52 Stat. 447, was a reasonable regulation and a valid exercise of the rule-making power. It was decided that the earnings and profits of the John H. Wheeler Company were required to be computed as provided by the Regulations, i. e., by using the transferors' basis in determining the corporate gain realized on the disposition
158 of certain assets acquired by the corporation in a transaction in which gain or loss was not recognized to the transferors. The Supreme Court based its decision on the applicability of the Regulations, which were considered decisive of the issue presented without regard to the retroactive effect of Section 501 of the Second Revenue Act of 1940, c. 757, 54 Stat. 974. Moreover, the Supreme Court considered that Section 111 (c) of the Revenue Act of 1938, *supra*, (identical with Section 111 (c) of the Revenue Act of 1934, c. 277, 48 Stat. 680, involved in this case), supported the Commissioner's position, stating:

"Indeed. Congress appears to have provided for this result in the statute itself (§ 111 (c) of the 1938 Act), which declares: 'In the case of a sale or exchange, the extent to which the gain or loss determined under this section shall be recognized for the

purposes of this title, shall be determined under the provisions of section 112." [Italics, the Court's.]

The provisions of Article 115-1, Treasury Regulations 86, promulgated under the Revenue Act of 1934, supra, applicable in the present case, are substantially similar to those of Article 115-3, Treasury Regulations 101. Accordingly, the decision of this Court to the effect that the Regulations are invalid and that their promulgation was not within the powers conferred by Congress on the Secretary of the Treasury cannot be reconciled with the decision in the Wheeler case, supra.

We certify that this petition for a rehearing is presented in good faith and not for delay.

159 We respectfully request, therefore, that the opinion handed down by this Court on March 26, 1945, be reconsidered and that the decision of the Tax Court be reversed.

Respectfully submitted,

SAMUEL O. CLARK, JR.,
Assistant Attorney General,

SEWELL KEY,

ROBERT N. ANDERSON,

HILBERT P. ZARBY,

Special Assistants to the Attorney General.

APRIL 1945.

160

In United States Circuit Court of Appeals

Order granting rehearing

Entered May 7, 1945

This case came on to be heard upon the petition for rehearing filed by the petitioner, and the brief in opposition thereto filed by the respondents.

On consideration whereof, it is ordered that the case be assigned for argument upon the petition for rehearing at the session of court beginning May 21, 1945, and that argument be limited to the question whether this case is governed by the decision of the Supreme Court in Commissioner v. Wheeler, et al. Exrs., announced March 26, 1945. Time allowed for such argument is 30 minutes a side.

In United States Circuit Court of Appeals

Cause argued and submitted May 25, 1945

Before HICKS, ALLEN and MARTIN, JJ.

This cause is argued by Hilbert P. Zarky for Petitioner and by R. M. O'Hara for Respondents and is submitted to the court.

In United States Circuit Court of Appeals, Sixth Circuit.

Judgment

Entered June 25, 1945

This case came on to be heard upon the petition for rehearing, the briefs in opposition thereto, the record, and oral argument of counsel.

On consideration whereof, it is ordered that the opinion heretofore announced (March 26, 1945), be amended in the following particulars:

That portion on page 3, beginning with the words "in order" in line 8 and continuing through line 36, is stricken out.

The second and third paragraphs on page 4, and all of page 5, are stricken out.

The following is inserted, beginning in line 11 on page 4: In this respect the case is sharply differentiated from Commissioner v. Wheeler et al., Exrs., — U. S. —, decided March 26, 1945, which held valid and applicable Treasury Regulations 101, Art. 115-3, embodying the provisions of the 1940 amendment as to the determination of earnings and profits of a corporation for dividend purposes. Relying upon the cited case, the Commissioner contends that Regulations 86, Art. 115-1, a predecessor of Art. 115-3, requires reversal of the decision of the Tax Court. We think

161 that Art. 115-1 does not govern here, for Treasury Decision

No. 5024, 1940-2, Cum. Bull. 110, declares that while the rules stated in the regulations are applicable to cases which were pending before the Board of Tax Appeals on September 20, 1940, the limitation of § 501 (c) affects the tax liability for the specific year or years actually so pending on or determined prior to September 20, 1940. This decision applies the saving clause of § 501 (c) to cases governed by Art. 115-1. As a contemporaneous interpretation of the meaning of the regulations by those who are appointed to carry out its provisions, Treasury Decision No. 5024 has great weight and is entitled to respect. Augustus v. Commissioner, 118 Fed. (2) 38 (C. C. A. 6), certiorari denied, 313 U. S. 585. Cf.

Bowles, Admr., v. Seminole Rock & Sand Co., — U. S. — decided June 4, 1945.

In view of the fact that the transaction involved took place on January 31, 1934, and Art. 115-1 was promulgated on February 11, 1935, Treasury Decision No. 5024 may be viewed as a limitation on its retroactive effect. Since the decision was made by the Commissioner with the approval of the Secretary of the Treasury, this limitation upon the retroactivity of the regulations has a double congressional sanction, one arising from the saving clause in § 501 (c), the other from the specific authority granted the Commissioner with approval of the Secretary, under § 8791 (b) of the Internal Revenue Code, to limit the retroactive effect of any ruling, regulation, or treasury decision relating to the internal-revenue laws in precisely this way.

The decision of the Tax Court is affirmed.

{Clerk's certificate to foregoing transcript omitted in printing.}

162 Supreme Court of the United States

Order allowing certiorari

Filed November 5, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Murphy and Mr. Justice Jackson took no part in the consideration of decision of this application.